

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

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In Re: ) Case No. 19-30088  
PG&E CORPORATION AND PACIFIC ) Chapter 11  
GAS AND ELECTRIC COMPANY ) San Francisco, California  
Debtors. ) Friday, August 9, 2019  
 ) 11:30 AM  
 )

MOTION OF DEBTORS PURSUANT TO  
11 U.S.C. SECTIONS 363 AND  
105(a) FOR AN ORDER APPROVING  
TERMS OF EMPLOYMENT FOR NEW  
CHIEF EXECUTIVE OFFICER AND  
PRESIDENT OF PG&E CORPORATION  
[2662]

MOTION OF DEBTORS PURSUANT TO  
11 U.S.C. SECTIONS 105(a),  
363(b), AND 503(c) FOR ENTRY  
OF AN ORDER (I) APPROVING  
DEBTORS' INCENTIVE PROGRAM  
FOR CERTAIN KEY EMPLOYEES AND  
(II) GRANTING RELATED RELIEF  
[2664]

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, FRIDAY, AUGUST 9, 2019, 12:02 PM

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3 (Call to order of the Court.)

4 THE CLERK: All rise.

5 THE COURT: Good morning, everyone. Or yes. Or good  
6 evening, good afternoon, everyone. Sorry to keep you waiting.  
7 We had a little bit of a traffic jam on the prior calendar.

8 THE CLERK: Matter of PG&E Corporation.

9 THE COURT: Shall we start? I'd like to start with  
10 the report on the status conference; is that okay?

11 So just for -- so by my calendar, we have two matters  
12 on that were scheduled and continued relating to compensation  
13 matters, and then we had the status conference on the report  
14 from the Governor's office and CPUC so.

15 We got Mr. Kornberg here, so that means there's  
16 something to report, right?

17 MR. A. KORNBERG: Unfortunately, not enough. And Your  
18 Honor, Ms. Mitchell is also here from the Governor's office.

19 Alan Kornberg from Paul, Weiss, Rifkind, Wharton &  
20 Garrison for the California Public Utilities Commission.

21 Your Honor, since we were last here on July 24,  
22 advisors for the Governor's office and the CPUC solicited views  
23 from the principal parties involved in the various pending  
24 exclusivity motions, and we did that before putting pen to  
25 paper. We took into account the parties' perspectives, and

1 then the Governor's office and the CPUC jointly distributed a  
2 competing plan proposal protocol to the key parties on  
3 Thursday, August 1. We made it abundantly clear that it was a  
4 draft for discussion purposes and that nothing was carved in  
5 stone. We followed up with numerous calls, meetings, and  
6 emails with the parties to solicit their comments and their  
7 reactions. And Your Honor, we did receive some very thoughtful  
8 responses.

9           Unfortunately, it became very clear very quickly that  
10 the single, most controversial issue revolved around the  
11 debtors' role in selecting a plan proposal. Frankly, all the  
12 other matters seem eminently solvable.

13           There are some parties in this case that take the  
14 position that although the debtors are solvent, they should  
15 have no role in selecting a plan proposal. And there are other  
16 parties that believe that no special governance mechanisms are  
17 required or acceptable, despite the unique and challenging  
18 circumstances of these cases.

19           THE COURT: Well, by selecting a proposal, I mean, at  
20 the moment there is no -- as long as exclusivity's in place,  
21 the only selector is the debtor, who is the prospective  
22 proponent, right?

23           MR. A. KORNBERG: That's --

24           THE COURT: You mean --

25           MR. A. KORNBERG: -- correct.



1 THE COURT: -- if we open it up and one or more  
2 competing plans, the issue is who picks the competing plan; is  
3 that what you're saying?

4 MR. A. KORNBERG: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. A. KORNBERG: And again, I'll come back to this.

7 THE COURT: But don't you think maybe the judge might  
8 have a role in that?

9 MR. A. KORNBERG: Well, Your Honor, but that might be  
10 at the end of the process.

11 THE COURT: Okay.

12 MR. A. KORNBERG: And that's what's particularly  
13 troubling.

14 THE COURT: Okay.

15 MR. A. KORNBERG: And by the way, Your Honor, we made  
16 that point repeatedly, that if there are competing plans and  
17 there's no process for decision making, and there --

18 THE COURT: Well, the law says that.

19 MR. A. KORNBERG: Right.

20 THE COURT: -- if you have -- but even before that,  
21 before -- well, you go ahead --

22 MR. A. KORNBERG: Okay.

23 THE COURT: -- and I'll give you my thoughts.

24 MR. A. KORNBERG: So very unfortunately, the PUC sees  
25 an apparent unwillingness of some of the parties to engage

1 constructively again on --

2 THE COURT: Yeah.

3 MR. A. KORNBERG: -- this issue.

4 THE COURT: No names, though.

5 MR. A. KORNBERG: No names.

6 THE COURT: No, no names.

7 MR. A. KORNBERG: I'm not going to name names, but  
8 they know who they are.

9 THE COURT: But I don't.

10 MR. A. KORNBERG: And we'll keep it that way, Your  
11 Honor. But that's really the key issue here, which is if we  
12 are to select a plan before unleashing a confirmation process,  
13 who is the decision maker?

14 The draft protocol that the Governor's office and the  
15 PUC disseminated provided for a decision-making process after  
16 consultation with key parties-in-interest, which include the  
17 Governor's office, the PUC, and the official committees, but  
18 there was a breakdown over the issue of the debtors' role in  
19 that process.

20 So I was told at one of our meetings that the PUC was  
21 being naive about these cases. Your Honor, I believe the  
22 naivete here is with those that want to embark on a risk-laden  
23 process without paying sufficient heed to the legislatively  
24 mandated deadline for resolution of these cases, and that is  
25 June 30, 2020.

1           And Your Honor, there are people that in this process  
2 said, well, we're sure the legislature will extend that  
3 deadline; I don't know how they have that degree of confidence.  
4 It's imperative to find a solution to an extremely complex set  
5 of problems that will drive these cases, and we believe that  
6 there should be a structure imposed to achieve that goal.

7           And Your Honor, there are a couple things that are  
8 worth mentioning. Everybody knows about what we'll be facing  
9 in the Chapter 11 cases. I think there's going to be a very  
10 hotly contested claims resolution process, and you'll hear a  
11 lot more about that in the coming days, and we may have three,  
12 or potentially more, competing plan proposals that can proceed  
13 to confirmation, and everybody knows what the confirmation  
14 process looks like when you have competing, contested plans.  
15 But that's just the proceedings in this court.

16           I want to remind people that it took approximately six  
17 months for the PUC to conduct its approval process for the  
18 global settlement and Chapter 11 plan that resolved PG&E 1; six  
19 months.

20           THE COURT: That included the four months mediation,  
21 or --

22           MR. A. KORNBERG: Not including --

23           THE COURT: -- after?

24           MR. A. KORNBERG: -- the four-month mediation.

25           THE COURT: Well, whatever the length was. It was

1 long.

2 MR. A. KORNBERG: And Your Honor, that plan and the  
3 settlement, because of the mediation, were consensual. Given  
4 the fact-driven, quasi-judicial nature of the CPUC rate  
5 proceedings, which require their own evidentiary hearings, we  
6 believe that the parties are not paying sufficient attention to  
7 how the PUC could go about conducting its public process, and  
8 that public process is an essential forum for ratepayer input  
9 and protection, which also requires that we make the findings  
10 mandated by AB1054. How would we do that with respect to  
11 multiple plans and do that before June 2020?

12 And Your Honor, I'm being very honest, we don't know  
13 how that could be accomplished within that timeline. We will  
14 give it a lot of thought. We will try our hardest. But this  
15 is a somewhat baffling assignment, which is part of the reason  
16 that motivated us to get up on the 24th and say, wait a moment.  
17 Let's have competition, but let's have competition before we  
18 proceed to confirmation.

19 THE COURT: Well, let me interrupt you again. And I  
20 don't mean to -- you know, when someone says I don't mean to  
21 interrupt you, they usually interrupt you.

22 But to some extent, I am a gatekeeper, and maybe not  
23 the right one, but if I deny exclusivity, there is only one  
24 person who can be the proponent, and that's the debtor, right?  
25 If I maintain exclusivity.

1 But then, it seems to me from my point of view, and  
2 not even thinking about CPUC or the legislature or any other  
3 agency, I have to say, well, what if that plan gets run aground  
4 by unconfirmable, and we're months down the road? So am I  
5 right? If I maintain exclusivity, there's only one plan to  
6 debate; isn't that the case?

7 MR. A. KORNBERG: Your Honor, I think it's a -- that's  
8 an undeniably true statement.

9 THE COURT: Okay.

10 MR. A. KORNBERG: But the effect of not permitting  
11 competing plans at this stage may have the effect of requiring  
12 people to actually negotiate. And maybe the byproduct of  
13 that --

14 THE COURT: No, I understand that.

15 MR. A. KORNBERG: -- would be one plan that actually  
16 works and that gets done by June.

17 THE COURT: But one of the things that I intended to  
18 ask you today, if you didn't report peace breaking out, was to  
19 ask you to explain something that I believe you said -- and  
20 maybe it was one of the other lawyers, I don't remember -- but  
21 I believe you said something like, you don't want there to be  
22 chaos.

23 And again, sticking with my little world, it seems to  
24 me that I can control a bit of the chaos, at least in a -- if  
25 we oversimplify, if I allow a competing plan -- so let's assume

1 there are two plans on the table or three, not twenty -- then  
2 the next big step is disclosure statement here. And the Court  
3 controls that. So there could be -- so that sounds like it's  
4 complicated and expensive, but it doesn't have to be chaotic  
5 because the end result might just be one disclosure statement,  
6 and then there's a natural attrition.

7 It seems to me, if you get past that, then the process  
8 for soliciting votes can be parallel in multiple plans, and  
9 then the law says what to do if there is more than one accepted  
10 plan. Leaving aside what is still difficult and expensive, but  
11 maybe not chaotic, is what if there's only one plan left and  
12 then there are challenges to confirmation? That's what we do,  
13 is deal with objections to confirmation.

14 MR. A. KORNBERG: Um-hum.

15 THE COURT: So it would seem to me that if we had two  
16 or three competing plans, the voters would have something to  
17 say with the one that would survive that, the Court would have  
18 a responsibility of picking out of more than one, and you still  
19 have the confirmation battle. And that's where, again, I'm not  
20 suggesting that it wouldn't be difficult and expensive and  
21 influenced by the clock ticking for June 30th, but it's not  
22 chaotic, in the sense of -- I think it's my role to maintain  
23 the non-chaos, at least in the bankruptcy arena. Am I missing  
24 anything --

25 MR. A. KORNBERG: It's certainly --

1 THE COURT: -- or oversimplifying?

2 MR. A. KORNBERG: I think it's a -- I think there may  
3 be a little simplification.

4 THE COURT: Okay.

5 MR. A. KORNBERG: So --

6 THE COURT: That's fair.

7 MR. A. KORNBERG: -- we do agree that there are  
8 various points where the Court can be a gatekeeper. But let's  
9 say we get through the disclosure statement process, and we all  
10 know the law that says, you don't try confirmation issues at a  
11 disclosure statement hearing, other --

12 THE COURT: I wish everybody would remember that.

13 MR. A. KORNBERG: And so assume that the plans that  
14 are presented are not patently unconfirmable, which is think is  
15 the right standard at that point, and let's say we do have two  
16 confirmation proceedings teed up. Of course, that's what we  
17 had in PG&E 1, as I'm sure you well remember.

18 THE COURT: Well, it got meditated.

19 MR. A. KORNBERG: And there was -- but there was a  
20 confirmation trial --

21 THE COURT: Um-hum.

22 MR. A. KORNBERG: -- and then we were in the midst of  
23 a second confirmation trial, and I didn't look up how long that  
24 took.

25 THE COURT: Forty days, total.

1 MR. A. KORNBERG: Forty days of --

2 THE COURT: We counted them.

3 MR. A. KORNBERG: -- of trial time, Your Honor?

4 THE COURT: Ms. Brawder (ph.) and I are --

5 MR. A. KORNBERG: Okay.

6 THE COURT: -- veterans of it. I almost said victims.

7 MR. A. KORNBERG: So that is going to take a while.

8 We'll probably be well into the spring.

9 THE COURT: No, I understand.

10 MR. A. KORNBERG: And then we have the additional  
11 problem, as I mentioned, which is not your problem, but it is a  
12 problem for everyone in this courtroom, which is meanwhile, the  
13 CPUC is supposed to be approving a Chapter 11 plan.

14 THE COURT: Well, that was really my question to  
15 you --

16 MR. A. KORNBERG: Yes.

17 THE COURT: -- does it have to be sequential, or can  
18 it be parallel? In other words, just suppose we got past the  
19 first, next round and we had competing plans that are out for  
20 consideration by the voting masses, which really are two  
21 classes as I see it, in at least the plans that have been  
22 suggested. Does the CPUC have to wait, or can it start its  
23 process?

24 MR. A. KORNBERG: Our view is that we have to know the  
25 plan that we're being asked to approve.



1 THE COURT: So it's kind of linear?

2 MR. A. KORNBERG: Yes.

3 THE COURT: The bankruptcy court has to, what,  
4 complete the confirmation before the CPUC can make the final  
5 rule?

6 MR. A. KORNBERG: Yes. I mean --

7 THE COURT: Okay.

8 MR. A. KORNBERG: -- Your Honor, because I should  
9 really mention this. The PUC's proceedings, for those that are  
10 not aware, are very fact driven.

11 THE COURT: No --

12 MR. A. KORNBERG: They're --

13 THE COURT: -- I know they are.

14 MR. A. KORNBERG: -- quasi-judicial. There will be  
15 lots of detailed testimony about issues involving billions of  
16 dollars of rates. There's the opportunity to cross-examine  
17 financial advisors and the like --

18 THE COURT: No, yeah, I know.

19 MR. A. KORNBERG: -- and to do that with respect to a  
20 plan that may never see the light of day, and also just getting  
21 the timeline for those proceedings, we are kind of scratching  
22 our heads at the PUC to see whether --

23 THE COURT: Okay.

24 MR. A. KORNBERG: -- that's possible.

25 THE COURT: So leave aside the June 30 deadline that

1 the Governor and the legislators have set, and without  
2 speculating on whether that's in concrete or fluid, you're  
3 saying that if we had a traditional bankruptcy situation where  
4 the disclosure statements are behind us, whether there's one or  
5 multiple, leave that aside, and we're now at a point where Plan  
6 A and Plan B are out for vote, that as we know, those  
7 situations don't happen very often, but the voters, really,  
8 tell us which one gets past the next gate.

9 MR. A. KORNBERG: Um-hum.

10 THE COURT: And if both get past that next gate, I  
11 believe at some point -- I forget whether you have to deal with  
12 objections first or not, but the Court at some point has to  
13 make the call on which one to select.

14 You're telling me that at least the CPUC couldn't  
15 finish its job, and maybe couldn't even start its job, until  
16 we're down to one survivor?

17 MR. A. KORNBERG: Well, I can't answer the detailed  
18 questions. What I've been told --

19 THE COURT: Yeah.

20 MR. A. KORNBERG: -- is that we really have to know  
21 what plan it will be. Whether you could start the process  
22 without full knowledge of that, I don't know.

23 But Your Honor, the idea that we had, and the  
24 Governor's office and the PUC were promoting was, instead of  
25 waiting until the very -- let's say we have multiple,

1 confirmable plans. Rather than waiting until the bitter end  
2 for Your Honor to decide unilaterally which is in the best  
3 interest -- assuming that they were voted on, rather than Your  
4 Honor deciding that at the end, could we have a process at the  
5 outset to make that determination, with the opportunity for  
6 people that were unhappy with this decision to come back and  
7 say, I want you to terminate exclusivity, notwithstanding the  
8 process that's embarked upon here. And that was the issue that  
9 we really couldn't seem to resolve.

10 And without being unduly negative today, although I  
11 was accused of that already this morning, we really could not  
12 get the parties to listen to each other on this governance  
13 issue. There are people here that believe Your Honor is going  
14 to terminate exclusivity and that they're going to get what  
15 they want, and our answer to that is, of course, even getting  
16 what you want may not be a pure victory if we end up with a  
17 process that extends beyond June.

18 THE COURT: Right.

19 MR. A. KORNBERG: And again, there are other people  
20 that think that June deadline is not really a real deadline,  
21 and I'm not sure the basis for that, so I'm afraid that our  
22 failure in our effort, and there was a lot of hard work put  
23 into it, doesn't really bode very well for these cases, unless  
24 there's some significant change in approach. And the  
25 Commission will do whatever it can to make that happen, but we

1 believe that people really need to think about the June  
2 deadline and how we're going to make it, particularly if  
3 there's several positive and constructive plan proposals on the  
4 table.

5 THE COURT: Well, I'm having a little trouble knowing  
6 what's the best message you're sending me, and maybe your role  
7 today is not to send me a message at all, because my job is to  
8 decide what I have to decide next week on whether I let one or  
9 two, or more than that, plans compete with the debtors' plan,  
10 which hasn't seen the light of -- I haven't seen, but I've been  
11 told that it might be there. And so I can't do anything but do  
12 that.

13 But it seems to me before, when you asked for the  
14 continuance two weeks ago you, and the message from the  
15 governor, were welcoming competing plan. And so you're not --  
16 I don't imagine, as a litigant or as a lawyer for your client,  
17 you're not changing your recommendation on that? Or if you  
18 are, you need to tell me, maybe not today, but on --

19 MR. A. KORNBERG: No.

20 THE COURT: -- Tuesday.

21 MR. A. KORNBERG: Your Honor, let me be very clear:  
22 our position has not changed. It's because we want a  
23 competitive plan process --

24 THE COURT: Right.

25 MR. A. KORNBERG: -- that we're here. We want there

1 to be a competing plan process. I will say this again, the  
2 advent of the noteholder proposal, we view as a very positive  
3 event in this case. I think it's galvanized people in a  
4 constructive way. There are elements of the subrogation claim  
5 holders' term sheet that are very attractive and interesting.  
6 The debtor is making progress, we understand, on their plan  
7 proposal.

8 So the competition is extremely welcome. I think the  
9 end result will be better for the State, better for ratepayers,  
10 better for California --

11 THE COURT: And how about for the fire victims?  
12 Because --

13 MR. A. KORNBERG: And better for the --

14 THE COURT: -- that's why we're here.

15 MR. A. KORNBERG: -- fire victims.

16 THE COURT: We wouldn't even be here, but for the fire  
17 victims.

18 MR. A. KORNBERG: And better for the fire victims.  
19 The more money that this case attracts to solve the problem,  
20 certainly the better for the fire victims.

21 So the competition is a great objective. I think it's  
22 already having a positive effect. The question is how do we  
23 channel that competition into a process that is calculated to  
24 be successfully resolved by the end of June?

25 THE COURT: Okay.

1 MR. A. KORNBERG: And that's the issue.

2 THE COURT: But then we come back to my question,  
3 not -- I mean, I was aware and anticipated that lots and lots  
4 of people were spending lots and lots of time, while I was  
5 waiting for this two weeks to go by -- and that's fine, and I  
6 appreciate what's being done outside of my domain -- but I came  
7 back to the same question: is Mr. Kornberg right, there's  
8 going to be chaos because I allow competing plans? And the  
9 answer is well, there's going to be complications, but at least  
10 I think the bankruptcy system is in a position to deal with  
11 that form of chaos. It doesn't solve the problem, it doesn't  
12 solve any of these other problems, but -- because otherwise,  
13 there might as well be exclusivity permanently.

14 MR. A. KORNBERG: Um-hum.

15 THE COURT: And that doesn't -- and again, I don't  
16 care. I don't have a stake in the outcome, as long as there's  
17 an outcome. And my fear, personally, is what I said a minute  
18 ago, that whether it's November or June 29th, I don't want to  
19 then have a confirmation fight cause the deadline to miss, and  
20 all the ramifications, to tell the victims, sorry, you're not  
21 going to get paid for another X days, weeks, months, years.

22 MR. A. KORNBERG: Well, Your Honor, I can't --  
23 hopefully, chaos will not ensue, no matter what happens here.

24 THE COURT: Yeah.

25 MR. A. KORNBERG: But here is the very real problem.

1 If we were able to go forward with a competing plan in  
2 contested confirmation proceedings that are very possible,  
3 again, I think that it would be very difficult -- I'm not  
4 saying it's impossible, but it's very difficult to imagine how  
5 we will be able to sync up the PUC approval process, which also  
6 has to occur by June -- by the end of June.

7 THE COURT: Well, again, I don't want to turn this  
8 into just the two of us. I want to hear -- everybody wants to  
9 be hears. But to the extent that I'm persuaded to break  
10 exclusivity for one or two, at least, I'll be looking to you  
11 for some guidance as to what can the bankruptcy system do to  
12 free up the log jam so that the CPUC can act functionally.

13 Or stated differently, okay, let's suppose I've made  
14 the decision that I will allow two competing plans, so that's  
15 three, what should we do for a timeline to get to the point  
16 where this court and its rules, leaving aside some of the  
17 unpredictable things, would put the CPUC in a position to know  
18 which plan it's supposed to be passing on, or rather --

19 MR. A. KORNBERG: Well --

20 THE COURT: -- getting the public --

21 MR. A. KORNBERG: Yeah.

22 THE COURT: -- I mean, all the things that have to  
23 happen?

24 MR. A. KORNBERG: So if you assume that it will be  
25 another six-month process in order for the CPUC to do its work

1 and to let all the interveners be heard and have the  
2 evidentiary presentation that are required, if -- we really  
3 have to know what the plan is by January.

4 THE COURT: Yeah.

5 MR. A. KORNBERG: And that's a very simplistic answer.  
6 I'm sure I will be told afterwards there are a million other  
7 things that have to happen --

8 THE COURT: There are.

9 MR. A. KORNBERG: -- but I think --

10 THE COURT: There probably are.

11 MR. A. KORNBERG: -- it's the best answer I can give  
12 you this morning, Your Honor.

13 THE COURT: Okay. Well, and does someone from the  
14 Governor want to speak --

15 MS. MITCHELL: Yes.

16 THE COURT: -- next? And then I'll just go down to  
17 the debtor and the two official committees and then everyone  
18 else. I mean, again, for me, this is not an action item today,  
19 I don't think, anyway.

20 May I have your appearance, please?

21 MS. MITCHELL: Nancy Mitchell, Your Honor, from  
22 O'Melveny & Myers --

23 THE COURT: Okay.

24 MS. MITCHELL: -- on behalf of Governor Gavin Newsom.  
25 I think, Your Honor, actually -- and I appreciate the Court --



1 we very much appreciate the Court giving us the opportunity to  
2 try to work with the CPUC on a protocol. I think it's been  
3 very instructive to us, if nothing else, in identifying the  
4 issues that Your Honor went to immediately.

5 Just to take a step back, the protocol that we had  
6 worked on with the CPUC essentially channeled the competition  
7 to the front end; there was a selection of a winning plan.  
8 Almost like a plan 363 process. And then --

9 THE COURT: A plan beauty contest.

10 MS. MITCHELL: Yeah, exactly. And then there was only  
11 one solicitation, which as Mr. Kornberg says, is probably  
12 easier for Your Honor's court docket, it's probably easier for  
13 the CPUC process.

14 THE COURT: Oh, there's no question.

15 MS. MITCHELL: Yeah.

16 THE COURT: But it's not a law firm, it's a --

17 MS. MITCHELL: You could, though, go the way you were  
18 talking about, which is to have a couple, three competing plans  
19 and try to build a schedule around that. And I do know, and  
20 Mr. Bray may want to speak to this -- I do know that the UCC  
21 has been working on something that looks more like that. And I  
22 think part of our challenge is to try to weave that together  
23 with the CPUC process and the other things that happen.

24 That may, at the end of the day, be the only choice we  
25 have to achieve the goal of competition in the time frame that

1 we're talking about. And so I think that's something that  
2 we're all trying to kind of grapple with. And those are, from  
3 a status conference perspective, at least those conversations  
4 with the UCC have been ongoing, and I think we need to let that  
5 process play out.

6 I did want to just give a little bit of perspective  
7 from the Governor's office. Your Honor knows that the state  
8 worked to pass AB1054. I had the pleasure of basically living  
9 in Sacramento for two months while that was going on; it was  
10 different. I think that banking on the legislature being able  
11 to change the June 30th date would be an unintelligent move for  
12 many of the parties in the case, given how hard it was to get  
13 that legislation passed in the first place.

14 I did also want to point out that I know Your Honor  
15 knows this, but the Governor has taken the extraordinary step  
16 of being active in these bankruptcy cases and hiring people to  
17 show up because of the critical importance of the resolution of  
18 these cases to the fire victims, to the ratepayers, to the  
19 workers, and to the State's energy policy goals generally.

20 And in the AB1054 process, we found that the  
21 creditors, the victims, the ratepayer advocates, were all very  
22 willing to come to the table in good faith and to recognize  
23 that while there was no perfect solution, you had to get  
24 somewhere, right, in order to solve the problem for the fire  
25 victims.

1 I feel like I got a little lost in the protocol  
2 discussion that we've had the last two weeks. I understand  
3 that there are significant interests bidding for this company  
4 on all sides of the table. I would ask them to remember that  
5 at the end of the day, this is about something more than a  
6 little bit of return. It is about getting the fire victims  
7 paid, and getting this company out of bankruptcy --

8 THE COURT: Right.

9 MS. MITCHELL: -- so that the California energy goals  
10 can be met. And I think that --

11 THE COURT: And I presume that, implicit between the  
12 lines, that's the Governor's goal and the legislators' goal --

13 MS. MITCHELL: Yes.

14 THE COURT: -- for the purpose of that deadline. It's  
15 not, we're going to close the case. There will be claims  
16 objections --

17 MS. MITCHELL: Yes, sir.

18 THE COURT: -- and lots of other stuff that's normal.  
19 It's a confirmed plan that --

20 MS. MITCHELL: Yes.

21 THE COURT: -- treats the fire victims however they  
22 either vote to approve on, or like it or not, could be forced  
23 upon.

24 MS. MITCHELL: Or however you determine, at the end of  
25 the day.

1 THE COURT: Well, I understand. But obviously --

2 MS. MITCHELL: Yeah.

3 THE COURT: -- the first choice would be it would be  
4 consensual.

5 MS. MITCHELL: Totally agree, Your Honor. Yes, that  
6 was --

7 THE COURT: But that, excuse me, I didn't mean to  
8 interrupt you --

9 MS. MITCHELL: No, that's fine.

10 THE COURT: -- that is a -- you don't speak -- you  
11 aren't the Governor, and you aren't the majority of the  
12 legislature, but when we look at AB1540 (sic) -- whatever the  
13 number is -- that's what it means by emerge. It's not a  
14 bankruptcy emerge, because it's a confirmed plan, right?

15 MS. MITCHELL: I'm never going to forget AB1054, but  
16 yes, Your Honor. So the June 30th date -- and I recognize I am  
17 not a walking legislative history, although I kind of feel like  
18 it on that particular bill -- but the June 30th date really had  
19 two goals. And one was fire season, while it is really all  
20 year in California now, the end of the summer is really when it  
21 becomes challenging. So the idea was to have PG&E in a  
22 position to be able to make its contribution to the fund before  
23 we got into the heart of the next fire season. That was  
24 important to the legislature.

25 The word "resolved", which I know you and Mr. Kornberg

1 discussed at the last hearing, was picked deliberately  
2 because -- and I think you'll see this if we ever submit any  
3 protocol of any type, or suggestion about scheduling order or  
4 anything -- the definition of resolved was picked because it is  
5 possible that the Court could enter a confirmation order that  
6 had limited conditions subsequent -- obviously, there will be  
7 all the things that have to happen to get the cases closed, but  
8 also the confirmation could have limited conditions subsequent,  
9 where you were confident that the case was going to happen,  
10 PG&E could make its contribution to the fund, and if the  
11 effective date happened later because the effective date was  
12 about meeting those sort of nonmaterial conditions, I would say  
13 Your Honor could decide that the case was resolved for the  
14 purposes that AB1054 was achieving. And so --

15 THE COURT: Well, I don't know that a federal  
16 bankruptcy court has the authority to interpret state law that  
17 way, but we can -- I mean, it can interpret the bankruptcy law  
18 to --

19 MS. MITCHELL: Yes.

20 THE COURT: -- when is it no longer debtor-in-  
21 possession? When do the rights and the duties and --

22 MS. MITCHELL: Agreed.

23 THE COURT: -- obligations change? But more  
24 importantly, when do the rights and duties per the plan kick  
25 in, versus --

1 MS. MITCHELL: Yes.

2 THE COURT: -- pre-existing?

3 I'm assuming -- well, I don't know if you know this,  
4 well, Mr. Kornberg knows it -- the first PG&E case is still  
5 open.

6 MS. MITCHELL: Yes, I know.

7 THE COURT: But it doesn't mean anything to anybody  
8 except --

9 MS. MITCHELL: Right.

10 THE COURT: -- me and the clerk and --

11 MS. MITCHELL: Yes.

12 THE COURT: -- the U.S. Trustee, who gets fees, but  
13 I'm assuming that that's what's meant here. An effective plan,  
14 or now you've clarified a little further by the debtor in a  
15 position to make its contribution to -

16 MS. MITCHELL: And to be honest --

17 THE COURT: -- the fund.

18 MS. MITCHELL: -- again, not a walking legislative  
19 history, but it was selected to give Your Honor a little bit of  
20 flexibility --

21 THE COURT: Yeah.

22 MS. MITCHELL: -- in determining --

23 THE COURT: Okay.

24 MS. MITCHELL: -- when the debtors' obligations under  
25 the plan were sufficiently ripe for those purposes.

1 THE COURT: But it probably wouldn't mean we've got a  
2 hearing set for disclosure statement.

3 MS. MITCHELL: No, sir.

4 THE COURT: Okay.

5 MS. MITCHELL: I do not believe that was --

6 THE COURT: Okay.

7 MS. MITCHELL: -- the legislative intent.

8 So our concern at the end of the day is achieving --  
9 and I think Your Honor went to the right questions. The  
10 Governor's concern is achieving a process that does allow for  
11 the June 30th date.

12 And look, the June 30th date is about getting PG&E  
13 into the fund --

14 THE COURT: Yes.

15 MS. MITCHELL: -- and allowing PG&E to be investment  
16 grade. There are a lot of consequences to that not happening,  
17 but the legislature does not legislate when the bankruptcy  
18 court lets the debtor out of bankruptcy. It is about the  
19 participation in the fund.

20 The Governor is concerned that there be competition,  
21 and that the best plan come to the table, however that gets  
22 structured. We recognize the challenges that the CPUC has in  
23 trying to work through their process.

24 I also would say, Your Honor, that a process that you  
25 put in place, there are other parties that have expressed some

1 interest in potentially participating. And I don't know  
2 whether we want the other plans at this point, but there  
3 certainly are third parties who --

4 THE COURT: Well, there are some people that have  
5 said, open it up to everybody, there are some that have said,  
6 if I'm going to open it up to one, I should open it up to  
7 others. And I --

8 MS. MITCHELL: Yeah.

9 THE COURT: -- can't remember, I believe your office  
10 wanted the exclusivity period shortened. But as I recall,  
11 going back to the first hearing, I don't think the Governor's  
12 office or anyone else got into the fine detail about who, they  
13 just said open it up or extend it, and I made the decision that  
14 I made, and then that led to the --

15 MS. MITCHELL: Yeah.

16 THE COURT: -- where we are today.

17 MS. MITCHELL: And I think --

18 THE COURT: Well --

19 MS. MITCHELL: -- Your Honor --

20 THE COURT: -- at the moment I have two -- we've got  
21 two candidates.

22 MS. MITCHELL: Right.

23 THE COURT: Okay.

24 MS. MITCHELL: And in fashioning a process, whatever  
25 it ends up looking like to achieve that competition and achieve



1 the June 30th goal, I think there are other people in the  
2 market who, given a clear process, might like to participate as  
3 well.

4 So from our perspective, not chaos just means a  
5 process that people can follow that will get us to an end date.  
6 I don't think the Governor really feels like that that needs to  
7 look exactly like the process that we put out there or exactly  
8 like the competing process that the noteholders put in there.

9 I don't know if you have any other questions --

10 THE COURT: Well --

11 MS. MITCHELL: -- from me?

12 THE COURT: -- I guess this is a question for  
13 everyone. Next Tuesday I have, on the table, two motions --

14 MS. MITCHELL: Yes.

15 THE COURT: -- to break exclusivity, at least for  
16 those two parties. And I believe the debtor and others are --  
17 and lots of people have weighed in on that position. I can't  
18 tell you that I got exact, the box score memorized, but at  
19 least I see it as the option of saying not to everybody, in  
20 which case, the debtor still has exclusivity for -- until  
21 September, or say yes to one, or both, of the moving parties,  
22 or to say open up the doors -- obviously, anybody that knows me  
23 knows that I'm probably not inclined to do that, but that  
24 doesn't mean I wouldn't listen. So to the extent that your  
25 office or CPUC want to refine your position on that, don't be

1 bashful. Just weigh in. But do it on Tuesday.

2 I mean, we won't stick with the traditional rules  
3 about filing something today, and just this --

4 MS. MITCHELL: Yep.

5 THE COURT: -- is a very fluid thing. So both you and  
6 Mr. Kornberg should give me an update on Tuesday, if you think  
7 it's something that is relevant.

8 MS. MITCHELL: Happy to do that.

9 THE COURT: That's not an invitation, by the way, to  
10 everybody in the case to file something Monday night. I'm just  
11 saying, you two are representing two of the very major players  
12 in this process that are alongside of a number of other major  
13 players. Okay.

14 MS. MITCHELL: So thank you, Your Honor. And I don't  
15 really have anything else that I think I need to say except  
16 that I did want to again express how much we appreciate the  
17 Court's efforts. This is tough, and --

18 THE COURT: I'm doing much.

19 MS. MITCHELL: -- 1054 --

20 THE COURT: You guys are doing the effort.

21 MS. MITCHELL: -- took a lot of -- put some additional  
22 pressure on your docket.

23 I did want to say one thing. The parties -- and I  
24 know Your Honor knows this, but the parties are very, very fond  
25 of quoting my client in their papers to support their positions

1 from his press releases, etc. So far, I actually haven't seen  
2 them quote him in context correctly once. But putting that  
3 aside --

4 THE COURT: Well, he chose to be a politician; I guess  
5 that goes with the territory, right?

6 MS. MITCHELL: I appreciate that. But he is here, and  
7 we are speaking for him. And so I think the parties quoting of  
8 the Governor should probably be given the deference it  
9 deserves.

10 THE COURT: Okay.

11 MS. MITCHELL: So thank you, sir.

12 THE COURT: Thank you, Ms. Mitchell.

13 So let's hear from the debtors' counsel first, and  
14 then we'll go to the two official committees.

15 Mr. Karotkin, some words of wisdom for me?

16 MR. KAROTKIN: I hope so. Stephen Karotkin, Weil,  
17 Gotshal & Manges, for the debtors.

18 First of all, Your Honor, I will say on behalf of the  
19 debtors that we are disappointed that we so far have been  
20 unable to reach an agreement, certainly, with the parties on a  
21 protocol. We don't think that is necessarily all loss. I  
22 think that it is still possible to reach a consensus, if people  
23 want to be reasonable about it.

24 I'm not here today to argue exclusivity; we can do  
25 that --

1 THE COURT: Right.

2 MR. KAROTKIN: -- on Tuesday. And I hope that other  
3 people take the same position on that.

4 I will say, from the debtors' standpoint, we are  
5 willing to work with all parties to achieve a consensus on a  
6 plan. As the debtors said from day one --

7 THE COURT: But will you reiterate? You're also  
8 willing to work on a competitive preplan process, similar to  
9 what Mr. Kornberg and Ms. Mitchell were referring to? Is  
10 that --

11 MR. KAROTKIN: Yes.

12 THE COURT: -- a fair statement, or not?

13 MR. KAROTKIN: And I think there may have been some  
14 confusion about --

15 THE COURT: Okay.

16 MR. KAROTKIN: -- what they were saying. But I think  
17 they were saying that the protocol that was being considered  
18 over the last two weeks was in the context of exclusivity  
19 remaining in place.

20 THE COURT: Okay.

21 MR. KAROTKIN: It was not in the context of you're  
22 lifting exclusivity and having competing plans. And we were  
23 trying to come up with a process as to how that would work, in  
24 consultation with the committees --

25 THE COURT: Okay.

1 MR. KAROTKIN: -- to arrive at something.

2 I think now some of that discussion perhaps has  
3 shifted to something else, but again, that's for after Tuesday  
4 depending on what happens on Tuesday.

5 As I said, the debtors are willing to work with all  
6 parties to achieve a consensus on a plan. We believe that the  
7 debtors, as fiduciaries for all parties in this case, are the  
8 best situated to do that. There are a number of proposals out  
9 there. In fact, if you read the newspapers over the past two  
10 days, there are equity holders who have now come forward and  
11 are willing to commit to provide fifteen billion dollars of new  
12 financing, equity financing, in order to propose a plan, and  
13 the debtors are working with those people as well. I think --

14 THE COURT: Well, I assume -- again, I might read the  
15 headlines, but I'm assuming that there will be a motion, or a  
16 stipulation or something, to allow that equity group to step  
17 up, too. I can't act on newspaper headlines, but procedurally,  
18 that's the way it should happen, don't you think?

19 MR. KAROTKIN: I'm not sure I understand your  
20 question.

21 THE COURT: Well, if their -- as you know, there are  
22 two -- as I said to Ms. Mitchell, there are two different  
23 creditor groups that are on the table and on the docket for  
24 Tuesday. What I'm saying is if there's another group that  
25 wants to do it, the proper procedure is to file a motion to do

1 it, or to get a stipulation to do it.

2 MR. KAROTKIN: They're proposing to work with the  
3 debtors to come up with a plan --

4 THE COURT: Okay.

5 MR. KAROTKIN: -- like, in the typical, customary  
6 circumstances of how cases are typically administered.

7 THE COURT: Okay.

8 MR. KAROTKIN: As existing equity, particularly in a  
9 solvent debtor, they have come forward to put up fifteen  
10 billion dollars of financing.

11 THE COURT: Okay. Equity group with the debtor.

12 MR. KAROTKIN: I don't believe they're seeking to file  
13 their own plan. This would be a more conventional approach --

14 THE COURT: Okay.

15 MR. KAROTKIN: -- Your Honor, which --

16 THE COURT: The way you introduced the subject, I  
17 wasn't clear that that's what you'd done. I understand your  
18 point now.

19 MR. KAROTKIN: And we can address that again on  
20 Tuesday.

21 THE COURT: Well, let me ask you if on Tuesday you  
22 will be able to give me and everyone else who's not privy to  
23 these private conversations, a date you might have a plan on  
24 file?

25 MR. KAROTKIN: Yes, sir. We --

1 THE COURT: You don't have to say it today, if you  
2 don't want to. And you don't have to say it on Tuesday, but it  
3 might be helpful to know.

4 MR. KAROTKIN: Yes. And we have already in our  
5 pleadings, and I think you alluded to it, indicated some of the  
6 key provisions of that plan that we are contemplating. And  
7 again, this financing would logically be a big part of this,  
8 equity financing would logically be a big part of it.

9 THE COURT: Sure.

10 MR. KAROTKIN: As I said --

11 THE COURT: I understand.

12 MR. KAROTKIN: -- we're still willing to try to reach  
13 an agreement with the parties, with respect to a protocol,  
14 going forward. We think that is the most appropriate way to  
15 proceed over the next month or so to avoid the situation that  
16 Mr. Kornberg is concerned about, and to have these cases  
17 administered in a typical fashion.

18 Particularly, Your Honor, I don't want to argue  
19 exclusivity, but in view of the complexity of these cases, the  
20 fact that you still have to have a hearing, unless we can  
21 resolve the wildfire claims consensually, that really is a  
22 gating item for any plan. People can put forward --

23 THE COURT: You mean the estimation?

24 MR. KAROTKIN: The estimation --

25 THE COURT: The estimation, yeah.

1 MR. KAROTKIN: -- or a consensual resolution.

2 THE COURT: No, no. I just wanted to see what you  
3 were -- of course, a consensual resolution is optimal. But you  
4 were eluding to the estimation --

5 MR. KAROTKIN: Yes.

6 THE COURT: -- proceeding in some --

7 MR. KAROTKIN: If you were to grant that motion, of  
8 course.

9 THE COURT: Yeah, yeah.

10 MR. KAROTKIN: And that, Your Honor, really is a  
11 gating item for any plan. People can propose a plan saying, my  
12 condition is the claims can't be more than this, my condition  
13 is the claims can't be more than that. But any plan that's  
14 realistic here, that issue has to be determined first. And  
15 that issue, Your Honor, will dictate the necessary financing to  
16 get through the Chapter 11. And not to say we won't be ready  
17 to file the plan, but really, any plan is premature until that  
18 number is fixed.

19 THE COURT: Well, Mr. Karotkin, again, the complexity  
20 of this case, none of us need to repeat. From my point of  
21 view, it's this narrow little box that I live in where I see  
22 these things going on. And I work with -- and I think about  
23 myself. And so exclusivity, relief from stay, and estimation  
24 are so interrelated, and --

25 MR. KAROTKIN: I couldn't agree more, Your Honor.



1 THE COURT: -- so one of the questions that we'll  
2 discuss, whether it's on Tuesday or Wednesday, or some other  
3 time, is how does it all fit? What do we do about the relief  
4 from stay? And I don't -- and I don't want this to be a --  
5 today's motion to -- I mean, next Wednesday's motion to be  
6 argued today, but they are all interrelated, and that's one of  
7 the challenges for all of us.

8 MR. KAROTKIN: I totally agree.

9 THE COURT: Okay.

10 MR. KAROTKIN: Thank you, sir.

11 THE COURT: Thank you, Mr. Karotkin.

12 Why don't we go with the OCC, and then we'll go to the  
13 TCC. Assuming that you want to be heard. Mr. Bray, did you  
14 get that duty today?

15 MR. BRAY: I did. I'll take a shot at it, Your Honor.

16 THE COURT: Well, you got nice things said about you,  
17 that's a good thing.

18 MR. BRAY: Well, it's unusual. Thank you.

19 MS. MITCHELL: I'm going to do it again.

20 MR. BRAY: Your Honor, Gregory Bray, Milbank, counsel  
21 for the Official Creditors' Committee.

22 Where to start? Last time we were here, Mr. Dunne  
23 told the Court that the UCC would work in good faith with the  
24 CPUC and the Governor on the requested protocol. As you've  
25 heard, unfortunately there as not a resolution that could be

1 reached. An interesting structure, but the structural problems  
2 that are inherent in trying to come up with a solution that  
3 doesn't involve determination of exclusivity, they're  
4 significant.

5 THE COURT: I know.

6 MR. BRAY: And the committee has --

7 THE COURT: I'm sure there are.

8 MR. BRAY: -- yes -- has concluded from that that  
9 really, as a practical and legal matter right now, we think the  
10 best path forward to resolve the competition that every party  
11 so far has stated they want is for the Court to take up the  
12 exclusivity motion next week and make a decision on that.

13 One of the -- a comment that, remind you, Mr. Dunne  
14 made last time was that, realizing there was this potential for  
15 not having agreement on a protocol, it was suggested it might  
16 be good to have a Plan B protocol, which would be a protocol  
17 that would be tethered to the Court's decision on terminating  
18 exclusivity, premised on the fact that the Court did terminate  
19 exclusivity and set forth a timeline or a structure for  
20 managing the process to attempt to mitigate the discord that  
21 people are expressing concern about.

22 THE COURT: Well, do you agree with me that if I were  
23 to break exclusivity, the next thing, the next big-ticket item,  
24 I think, leaving aside whether estimation has to come first or  
25 late, is to figure out how to be efficient in terms of any

1 disclosure statement phase, or before you start to get to --

2 MR. BRAY: Yes. Agreed.

3 THE COURT: Yeah, yeah.

4 MR. BRAY: Absolutely.

5 THE COURT: Yeah, okay.

6 MR. KAROTKIN: And we --

7 THE COURT: And then --

8 MR. KAROTKIN: -- sorry.

9 THE COURT: And if I were, on Tuesday, to say to these  
10 two parties, exclusivity's broken, that doesn't meant the  
11 debtor's out of the game. Obviously, the debtor has the right,  
12 and no doubt would propose its plan, a plan; whether it did it  
13 first or second is not a point.

14 MR. BRAY: Agreed. The exclusivity does not apply to  
15 the debtor ---

16 THE COURT: Yeah.

17 MR. BRAY: -- that's the law.

18 THE COURT: Of course.

19 MR. BRAY: So what we are trying to do, Your Honor,  
20 having gone through this process now, is work on this Plan B  
21 protocol. And we hope to file it with the Court before the  
22 hearing and we will, of course, share it with the key parties  
23 and try and see if we can build some consensus around this.  
24 But among the other things it will do is attempt to address the  
25 issue you just raised, is timing for filing a disclosure

1 statement, set forth a timeline.

2 Of course, the Court is the ultimate decision maker on  
3 all these issues. We would only proffer this as a potential  
4 road map to try and move the process along, and it is expressly  
5 conditioned on the Court having decided to terminate  
6 exclusivity. If the Court were to rule the other way, then  
7 this protocol would be of no value.

8 THE COURT: Well, sure. But the short answer is, if I  
9 were to deny exclusivity -- excuse me, deny the motion to break  
10 it, to terminate it -- if I were to leave the debtor in  
11 exclusivity, I would still be pressing debtors' counsel for a  
12 timeline.

13 Again, I can't have any -- I can't fix the things that  
14 Mr. Kornberg talked about, and I can't magically pretend that I  
15 know that the legislature will change the deadline, so I would  
16 repeat again what I said a couple of hearings ago. My  
17 commitment is to make sure that the bankruptcy court, or the  
18 institution, is not the hang up, to the best I can. And so if  
19 I were to say to Mr. Karotkin, you've got no competition yet,  
20 but I'd still be pressing him for a timeline. And obviously,  
21 if I terminate as to one or both or more than that, it's going  
22 to be the same question. It's still going to be, everybody has  
23 to work together to have an efficient and effective timetable.

24 So it may -- whether your Plan B is Plan C or  
25 something, it's something that you and your committee -- I

1 welcome your role. That's critical as kind of an in-betweenner.  
2 Because let's face it, Mr. Bray, you know it as well as I, if I  
3 were to look just at the plan that's on the table from the  
4 senior bond holders, their class isn't even impaired. There's  
5 two impaired classes, and they're the two sets of fire victims;  
6 that's it. So --

7 MR. BRAY: Understood, Your Honor.

8 THE COURT: -- somebody's got to figure out how to  
9 make that work. That's not to say there wouldn't be the equity  
10 or other challenges to the confirmation standards crammed down,  
11 and what have you, but that's a different discussion.

12 MR. BRAY: I agree with everything you said, Your  
13 Honor.

14 THE COURT: Okay.

15 MR. BRAY: I don't want to get too far into --

16 THE COURT: Right.

17 MR. BRAY: -- the exclusivity --

18 THE COURT: Right.

19 MR. BRAY: -- discussion for Tuesday. I would just  
20 repeat myself, that we do think probably -- there's no probably  
21 about it. It makes sense to go forward Tuesday.

22 THE COURT: Yeah.

23 MR. BRAY: We favor competition. I think you've heard  
24 from the Governor and the CPUC, they favor competition. I'll  
25 let Mr. Julian and Ms. Dumas speak for themselves on that

1 issue, but even as Mr. Kornberg has pointed out, so far, the  
2 competitive process has proven valuable and to some extent  
3 moved this process along.

4 And I think you will hear us argue next week that we  
5 favor lifting of exclusivities --

6 THE COURT: Um-hum.

7 MR. BRAY: -- sooner rather than later, because it  
8 will take into account the timeline issues we have, the  
9 legislative overlay, and the other issues. And that the sooner  
10 you make a decision, probably the better for the process so  
11 that then people can sit down and sort out the timeline that  
12 needs to be agreed to or realized because of the decision that  
13 you've made.

14 THE COURT: Well, so there will be no secrets about  
15 it, I hope to be able to make a decision when I hear the  
16 arguments.

17 MR. BRAY: Understood.

18 THE COURT: I wasn't intending to take it under  
19 advisement and write a thirty-five-page, publishable opinion  
20 that's due in six months. It may be that I just need to absorb  
21 it, but that's my hope is that I'll hear the arguments and give  
22 it some reflection and issue an overt ruling. So --

23 MR. BRAY: Understood. So --

24 THE COURT: -- I can't promise it; I'll try.

25 MR. BRAY: -- we will take a shot at this protocol

1 that we'll file with the Court. Obviously, I guess that we'll  
2 work for some consensus around it; it's certainly not binding  
3 on anyone and we don't want to step on the Court's toes in any  
4 fashion. It's simply there to try and assist the process.

5 THE COURT: I take it you would like to continue  
6 things this way, rather than to take kind of another radical  
7 departure of my looking to the OCC to be sort of a mediator of  
8 this issue -- or maybe you already are playing that role  
9 effectively, along with the Governor and the CPUC -- but to  
10 take further time out. I mean, you don't want me to extend  
11 that two-week moratorium --

12 MR. BRAY: No, Your Honor.

13 THE COURT: -- beyond next Tuesday?

14 MR. BRAY: No. Having --

15 THE COURT: Okay.

16 MR. BRAY: -- been through the last two weeks, we  
17 believe the best thing for the process is for the Court --

18 THE COURT: Okay.

19 MR. BRAY: -- to have the hearing next week and rule  
20 on the merits.

21 THE COURT: Okay.

22 MR. BRAY: Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Bray.

24 Ms. Dumas or Mr. --

25 MR. KAROTKIN: Ms. Dumas is on the phone, Your Honor.

1 THE COURT: Oh, okay. Ms. Dumas --

2 MS. DUMAS: Good morning, Your Honor, or good  
3 afternoon. It's Cecily Dumas --

4 THE COURT: Good afternoon, Ms. Dumas, you're --

5 MS. DUMAS: -- BakerHostetler, on behalf of the  
6 Official Committee of Tort Claimants.

7 We, the TCC, had positive and constructive meetings  
8 with the CPUC and the office of the Governor over the course of  
9 the last week and a half. We also have been in communication  
10 with the other major stakeholders in the case. We understand  
11 the desire of all the parties to really try to meet the AB1054  
12 deadline and acknowledge, as I think Your Honor mentioned and  
13 Mr. Karotkin mentioned, the sort of dating issue, or whatever  
14 term you want to ascribe to it, of the claims estimation  
15 process.

16 What we have indicated to the Governor's office and  
17 the PUC is that the Tort Claimants' Committee is in the process  
18 of developing a protocol for claims estimation. As Your Honor  
19 is aware, the only statement of the TCC thus far, relative to  
20 claims-estimation process, related to the Tubbs motion for  
21 relief from stay, but there are eighteen or nineteen fires,  
22 however you count them, all of which PG&E denies legal  
23 liability completely. So we're zero to however billions the  
24 tort claimants believe they're entitled to.

25 So it's going to be a process that will be needed to



1   hammered out with the debtors. It may be a combination  
2   oversight, overseeing of Your Honor of district court  
3   minitrials, state court trials, estimation proceedings.

4           Unlike other mass tort cases, we have a different  
5   causal event for each fire. And with PG&E, I guess marginally  
6   conceding causation, but not liability, we're in seventeen or  
7   eighteen times the trouble of every other mass tort case that a  
8   bankruptcy judge has had to deal with, where there's been one  
9   causal event, either asbestos or an IUD or other causal event  
10   that gave rise to mass tort claims. So --

11           THE COURT: Well, is that --

12           MS. DUMAS: -- we see this --

13           THE COURT: Ms. Dumas, wait a minute. Since --

14           MS. DUMAS: Yeah, yeah.

15           THE COURT: -- for purposes -- since for purposes of  
16   estimation, PG&E, through Mr. Orsini the other day, conceded  
17   that they admit to having been the cause, the only issue is  
18   they don't admit being liable. Is that really, therefore,  
19   eighteen different causals, or is it eighteen different fires,  
20   but all of which have their own estimation of damages? I mean,  
21   if you take --

22           MS. DUMAS: Oh, Your Honor, I'm so, so glad you asked  
23   that question. There's a magic act in Las Vegas that is very  
24   close to Mr. Orsini's description of what PG&E's actual  
25   position is.

1 THE COURT: Well, I wasn't aware --

2 MS. DUMAS: I believe what --

3 THE COURT: -- of that, but --

4 MS. DUMAS: -- he told Your Honor the other day --

5 well, first of all, PG&E does not concede legal liability at

6 all because it contests strict liability under inverse

7 condemnation.

8 THE COURT: But as big a question as that is, it's an  
9 easy question to frame and a difficult question, perhaps, to  
10 brief. But it's a judicial decision to take, say, yes or no.

11 MS. DUMAS: Sure.

12 THE COURT: Okay.

13 MS. DUMAS: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. DUMAS: And that's the easy one. And frankly,  
16 it's insulting that they even put that on their process, but --

17 THE COURT: Well, don't argue the --

18 MS. DUMAS: The more important --

19 THE COURT: Don't argue the merits.

20 MS. DUMAS: I'm not.

21 THE COURT: It's identified as an issue.

22 MS. DUMAS: I'm not arguing the merits.

23 THE COURT: Okay.

24 MS. DUMAS: We'll address that in due time. But what  
25 PG&E is saying is it wasn't negligent with respect to any fire.

1 And I believe what your Court didn't comprehend, because it was  
2 said very carefully, is that PG&E will only admit that its  
3 equipment caused the fires in the context of estimation  
4 proceedings, not trials --

5 THE COURT: No, I heard that. I heard that.

6 MS. DUMAS: -- which is a difference.

7 THE COURT: I heard that exactly.

8 MS. DUMAS: Yes. Well, so --

9 THE COURT: Well, but Ms. Dumas, I don't want to  
10 distract, I want to stick with the subject that we started with  
11 and hear from you, but I will just make this statement. Don't  
12 confuse the fact that who the judicial officer might be. You  
13 made it clear, and I haven't studied your responses to the  
14 estimation motion, but I know that your brief does attempt to  
15 respond to the questions I asked.

16 But as I see it, if the debtor says, for purposes of  
17 estimation, it means that it -- and if the inverse-condemnation  
18 principle comes out the way you think it will, I mean, you can  
19 make a very large estimation for all the damages, except for  
20 Tubbs. So be prepared to focus on those fine points after the  
21 debtors file their response to the -- their reply, rather, to  
22 the estimation motion, and whether we deal with it next  
23 Wednesday or sometime after that, those are very much early-on  
24 issues that have to be discussed.

25 MS. DUMAS: Yes, Your Honor.

1 THE COURT: So let's go back to the question --

2 MS. DUMAS: Yes.

3 THE COURT: -- of what to do about what Mr.

4 Kornberg --

5 MS. DUMAS: Yes.

6 THE COURT: -- and Ms. Mitchell talked about.

7 MS. DUMAS: Yes, sir.

8 THE COURT: Okay.

9 MS. DUMAS: So just one last observation. I would be  
10 thrilled, as would all of the tort claimants, if you were  
11 correct that what the estimation proceeding will be will  
12 consist of damages estimations. I don't think that's PG&E's  
13 position. I hope I am wrong, fervently hope that I am wrong,  
14 Your Honor.

15 So back to the plan process. The TCC has been in  
16 communication, as I said, with the other parties in the case.  
17 We are mindful of the outside time constraints imposed. We're  
18 mindful that we have to have parallel tracks of claims  
19 estimation and plan process for the very reasons that Mr.  
20 Kornberg eloquently identified at the beginning of the hearing.

21 We will do our best to work with the other parties.  
22 We have been in communication with the Official Committee of  
23 Unsecured Creditors about its plan protocol. We hope to reach  
24 agreement so that the TCC can support a plan protocol that is  
25 approved by the Court. We will work around whether the debtor

1 retains exclusivity longer, or whether the exclusivity is  
2 terminated as a result of the hearings next week.

3 Suffice to say, without arguing that point, that the  
4 TCC acknowledges the need at this point for speed on all  
5 fronts. And the possibility that if the Court goes forward  
6 with each plan seriatim, as opposed to all at once, we may end  
7 up with a busted plan and we will be exactly where Mr. Kornberg  
8 doesn't want to be in January or February.

9 THE COURT: Okay. All right. Is that it for now?

10 MS. DUMAS: Yes, sir.

11 THE COURT: All right.

12 MS. DUMAS: Thank you.

13 THE COURT: Thank you. Thank you, Ms. Dumas.

14 All right. I said I'd call on anyone else. Just tell  
15 me who'd like to speak, and let me hear from you.

16 MR. QURESHI: Good afternoon, Your Honor. For the  
17 record, Abid Qureshi, Akin Gump Strauss Hauer Feld, on behalf  
18 of the Ad Hoc Noteholder group.

19 Just a few comments, Your Honor, and I will be brief.  
20 First, the Ad Hoc Noteholder Committee is very appreciative of  
21 the efforts of both the Governor's office and the CPUC. And of  
22 course, we also welcome the role of the OCC in working towards  
23 a proposal.

24 As Your Honor is no doubt aware, we did in advance of  
25 this hearing file with the Court a proposed protocol of our

1 own. And now, it was a protocol that, of course, contemplated  
2 determination of exclusivity. And there's just a couple of  
3 points raised in there, Your Honor, that I would like to  
4 discuss with the Court. It was guided by three principles.  
5 Three principles that we understand to be supported both by the  
6 Governor and by the CPUC. And that is a plan process that is  
7 competitive, that is fair, and that is transparent.

8 And we believe, Your Honor, that the proposal that we  
9 filed with the Court accomplishes those things. Now, if the  
10 OCC can improve upon that, Your Honor, we absolutely welcome  
11 it, and we look forward to seeing what they file in advance of  
12 next week.

13 Your Honor, I wanted also to comment on a couple of  
14 things that came up in Your Honor's colloquy with Mr. Kornberg,  
15 three things in particular.

16 First, Your Honor raised the issue of who should be  
17 the decision maker when it comes to competing plans.  
18 Absolutely, one hundred percent this Court. And --

19 THE COURT: Well, again, decision maker as to what?  
20 Ultimately the confirmation, but --

21 MR. QURESHI: Decision maker as to what? Decision  
22 maker as to whether there should be one or two or three or more  
23 competing --

24 THE COURT: Right.

25 MR. QURESHI: -- plans.

1 THE COURT: Right.

2 MR. QURESHI: We absolutely think that it is  
3 unquestionably the role of this Court to play that gatekeeping  
4 function, and that is what our protocol contemplates.

5 The second point that arose in Your Honor's colloquy  
6 with Mr. Kornberg related to the specter of chaos in the plan  
7 process. And again, I think Your Honor is absolutely right,  
8 which is it is this Court that can, and no doubt will, control  
9 that chaos, and make sure that chaos never breaks out.

10 THE COURT: Well, controlling chaos is sort of wishful  
11 thinking. I'd like to think that maybe there won't be any  
12 chaos.

13 MR. QURESHI: I think, again, Your Honor, the interim  
14 deadlines that we set forth in our protocol, the steps --

15 THE COURT: Yeah.

16 MR. QURESHI: -- along the way --

17 THE COURT: I haven't studied what you filed. In this  
18 job now, I have to deal with only what's coming up.

19 MR. QURESHI: Fair enough.

20 THE COURT: There's a light in the tunnel, not at the  
21 end of the tunnel.

22 MR. QURESHI: Understood. And I certainly won't get  
23 into that, into our protocol --

24 THE COURT: Okay.

25 MR. QURESHI: -- in any greater detail than I have,

1 other than to say there are a series of milestones along the  
2 way designed precisely to avoid chaos, with this Court serving  
3 as the gatekeeping function. And we think it is eminently  
4 doable without chaos ensuing.

5 The last point that I want to comment on, Your Honor,  
6 is again, that arose with Mr. Kornberg. The impact on  
7 negotiations of whether this Court terminates or does not  
8 terminate exclusivity. And I heard, Your Honor, from Mr.  
9 Kornberg two things that, frankly, I have difficulty  
10 reconciling. One, he suggested that continued exclusivity  
11 might actually spur negotiations. But then Mr. Kornberg also  
12 noted that the filing of the Ad Hoc Committee's plan was a  
13 welcome development, and one that galvanized people in a  
14 positive way, to use his words. And we agree that it did.

15 But the fact is, Your Honor, that while there has been  
16 exclusivity, it has not spurred negotiations. It's kind of  
17 remarkable that with our plan term sheet out there, the debtors  
18 have not engaged with our group in any meaningful way.

19 THE COURT: Well, again, one thing I'm trying to avoid  
20 is discussions about what have or happened -- has or have not  
21 happened, sort of outside the courtroom.

22 MR. QURESHI: Fair enough.

23 THE COURT: I can draw my own inferences, but I don't  
24 want to be the -- I don't want to judge. I don't want to pick  
25 good guys and bad guys. I want to go on --



1 MR. QURESHI: So --

2 THE COURT: -- the record.

3 MR. QURESHI: -- and that was not the purpose of my  
4 comment, Your Honor.

5 THE COURT: Okay.

6 MR. QURESHI: Suffice to say that we think the best  
7 way to galvanize the parties, to have a meaningful negotiation  
8 is for there to be a process coming back to those three  
9 principles: that is competitive, that is fair, and that is  
10 transparent.

11 THE COURT: Well, I mean, competitive is good enough.  
12 I mean --

13 MR. QURESHI: Yep.

14 THE COURT: -- competing plans are, by definition,  
15 competitive. And in effect, your three items there and your  
16 protocol are only so good as your convincing me next week to  
17 break exclusivity for your client, right?

18 MR. QURESHI: Yep.

19 THE COURT: And if I say no, then you've got to -- I  
20 don't know what you have to do. But no, I understand. And so  
21 that's certainly what it comes down to is, is it better to  
22 stick to the status quo or to open up the options?

23 MR. QURESHI: Right. And we think, Your Honor, that  
24 ultimately, and I won't get into the merits, but that  
25 ultimately, time in this case just does not allow for a serial

1 plan process, that competition and proceeding on multiple  
2 fronts at the same time is the way to go.

3 So with that, Your Honor, we look forward to next  
4 Tuesday. And if the Court has any questions, I'm happy to  
5 address them, of course.

6 THE COURT: Thank you, and no. I'm fine.

7 MR. QURESHI: Thank you.

8 THE COURT: Anyone want to be heard, else?

9 Yes, sir.

10 MR. FELDMAN: Your Honor, on the phone, I'm not sure  
11 what's going on in the courtroom. Could I be heard?

12 THE COURT: Yeah. Who's that?

13 MR. FELDMAN: Your Honor, it's Mathew Feldman from  
14 Willkie Farr & Gallagher --

15 THE COURT: Okay.

16 MR. FELDMAN: -- on behalf of the Ad Hoc --

17 THE COURT: Just wait a second, hold on.

18 MR. FELDMAN: -- Committee on Subrogation Claims.

19 THE COURT: Okay, Mr. Feldman. Go ahead, please.

20 MR. FELDMAN: I'll be very brief. Your Honor, we were  
21 supportive when we were in front of Your Honor on July 24th  
22 about attempting to enter into a protocol. For all the reasons  
23 discussed and not discussed, that's not been successful.

24 Our view, Your Honor, is at this point going down a  
25 protocol, whether it's the OCC, whether it's the ad hoc group

1 of bondholders, it's simply unnecessary. If the Court's  
2 inclined to lift and terminate exclusivity next Tuesday for  
3 either our group or the ad hoc group of bonds, or both, it  
4 seems to me that the Court can accomplish everything that was  
5 intended by these various protocols by simply putting out a  
6 scheduling order that will create deadlines for people to file  
7 plans, whether it's our plans, the debtors' plans, or someone  
8 else who comes in and seeks termination of exclusivity, and go  
9 from there, because I'm very cognizant, as are my clients, of  
10 the June 2020 deadline.

11 Very interesting to hear Mr. Kornberg's statement  
12 about how long the CPUC process will take, and so from our  
13 perspective, we think competition is good, and we think the  
14 Court is more than capable of managing the process, and that's  
15 how we'd urge it to go forward.

16 THE COURT: Okay.

17 MR. FELDMAN: Thank you --

18 THE COURT: -- Mr. Feldman.

19 MR. FELDMAN: -- Your Honor.

20 THE COURT: Yeah. I mean, I understand that. And  
21 what you say, again, is consistent with your motion to  
22 terminate it. And if I grant your motion or grant the senior  
23 bondholders' motion, whether we call it a formal protocol or a  
24 court scheduling order, I'll still need advice and guidance  
25 from the players as to what that protocol ought to be, and

1 timing, and so on.

2           You're right, and I'm not -- if either or both of you  
3 get that motion granted, it doesn't mean you're going to file a  
4 plan and set a hearing on confirmation next week. So we're  
5 going to deal with it in some orderly fashion.

6           Thank you for your comments.

7           All right, the gentleman that came up, and I didn't  
8 get your name.

9           MR. JOHNSTON: Good afternoon, Your Honor.

10          THE COURT: I'm sorry, I try to recognize everybody,  
11 but I can't.

12          MR. JOHNSTON: First time appearing in this case. Jim  
13 Johnston of Jones Day, on behalf of certain --

14          THE COURT: Well, I think your partner was here for a  
15 prior hearing, but --

16          MR. JOHNSTON: He's been here several times --

17          THE COURT: Okay.

18          MR. JOHNSTON: -- yes.

19          Your Honor, we heard a lot of discussion about  
20 exclusivity and whether or not you should break exclusivity  
21 today. You've read in our papers, you'll hear next week, we do  
22 not think you should do so.

23          THE COURT: Right.

24          MR. JOHNSTON: Particularly given the June 30 date  
25 that is looming in everyone's minds. We believe --

1 THE COURT: Don't turn this into your motion for that.

2 MR. JOHNSTON: I am not going to do so.

3 THE COURT: Okay.

4 MR. JOHNSTON: I'm going to say that we believe that  
5 the debtors are the best stewards of the process going forward.

6 But what I rose to say, though, and I know I don't  
7 have to tell you, but the Code gives you all the tools to deal  
8 with what might happen if you do determine that there is cause  
9 to terminate exclusivity.

10 THE COURT: Um-hum. Right.

11 MR. JOHNSTON: You did it in the first PG&E case and  
12 managed it, you can do it in this case. Certainly --

13 THE COURT: By comparison, it was awful easy.

14 MR. JOHNSTON: I didn't have the privilege of living  
15 through the first PG&E case, but it sounded like a heck of a  
16 lot of fun. The --

17 THE COURT: Ask Mr. Kornberg.

18 MR. JOHNSTON: I think Your Honor, in your commentary  
19 with Mr. Feldman, hit the nail on the head, which is if you do  
20 decide to terminate exclusivity, you are going to want to  
21 develop a scheduling order, a "Plan B protocol" with input from  
22 the parties.

23 We heard reference from the committee today saying  
24 that, boy, they may file something on Monday night. We heard  
25 reference from Mr. Qureshi on behalf of the senior bondholders

1 that boy, they filed something yesterday.

2 THE COURT: Well, no, actually they filed it, I think,  
3 a couple days earlier in connection with their comment on the  
4 efforts that the Governor's office. I mean, it's --

5 It doesn't matter what day they filed it. They did  
6 file it prior to this morning or in that, I just haven't --

7 MR. JOHNSTON: Yeah. So I don't know if it was  
8 twenty-four hours ago or forty-eight hours ago.

9 THE COURT: Yeah, yeah.

10 MR. JOHNSTON: It is not something that will be before  
11 the Court on Tuesday. And so we would submit, let's not put  
12 the cart before the horse. Let's consider exclusivity on  
13 Tuesday and if, in fact, you do decide that exclusivity should  
14 be terminated in some way, shape, or form, there will need to  
15 be a reason to process for dealing with what comes next.

16 THE COURT: Right. But I did say to Mr. Quresky (sic)  
17 specifically, his protocol and his three points about  
18 competitive and so on, I said, that's fine unless I deny your  
19 motion, in which case, you're back on hold. I mean --

20 MR. JOHNSTON: Yeah.

21 THE COURT: -- it's the same. I understand. And the  
22 same with you. If I grant it, then you're going to be  
23 frustrated with the position you're in, but that doesn't mean  
24 you aren't going to be part of the process, too.

25 MR. JOHNSTON: No, I understand that, Your Honor.

1 THE COURT: Yeah.

2 MR. JOHNSTON: And the point simply was, especially if  
3 there was going to be competing "Plan B protocols" as to what  
4 happens with competing plans, that needs to be a reasoned  
5 process and it can't be something that's decided on the fly  
6 next week.

7 THE COURT: And Mr. Johnston, I wouldn't tell people  
8 they can't file things. I can only absorb so much, and the  
9 more people file, the more stuff I'm just going to have to deal  
10 with when I can. And so same is true. And so I'm sticking  
11 with the exclusivity and the oppositions, and that is the  
12 number one topic for Tuesday.

13 MR. JOHNSTON: Great. Thank you, Your Honor.

14 THE COURT: Thanks very much.

15 Okay. Anyone else want to be heard? Because again, I  
16 don't mind hearing from you, but I also don't intend to take  
17 any action, and I do have a couple other motions that we'd like  
18 to deal today. So unless there -- since I've asked for --  
19 invited and no one's coming forward, so I'm prepared to  
20 terminate today's hearing on what we just called the status  
21 conference, for lack of anything else, and thank you all for  
22 your comments, and say that I'll pick up my responsibility to  
23 do what I have to do come Tuesday when I hear the arguments on  
24 the exclusivity motions.

25 Mr. Karotkin, I'm prepared to go directly, without a

1 break, if we can move with the other two motions quickly. But  
2 we can also take a break, if you think that would be more  
3 helpful. What's your pleasure on this?

4 MR. KAROTKIN: I think people are -- let me just fix  
5 this.

6 THE COURT: Yeah. Don't do that. We might have to  
7 get a new microphone for you.

8 MR. KAROTKIN: I think people are anxious to go home  
9 on Friday, so --

10 THE COURT: Yeah, listen. I want to say to --

11 MR. KAROTKIN: Including me.

12 THE COURT: -- all the out-of-towners, this hearing  
13 got set on Friday because somebody said it was important, and  
14 that's why we ran late today. We had a regular calendar for  
15 other matters and I'm the one that lives here. So I don't  
16 know, we'll try not to set Friday midday hearings when we don't  
17 need to.

18 MR. KAROTKIN: I don't want to admit it was my idea.

19 THE COURT: So we have the CEO motion and the KEIP  
20 motion. I --

21 MR. KAROTKIN: Exactly.

22 MR. KAROTKIN: -- know what you've said, I'd like to  
23 hear from the U.S. Trustee, and --

24 MR. KAROTKIN: Right.

25 THE COURT: -- have a couple questions --



1 MR. KAROTKIN: Sure.

2 THE COURT: -- for you after that about the CEO  
3 motion. I don't know there's anyone else that wants to be  
4 heard on that one. Is that okay with you to go that way?

5 MR. KAROTKIN: That's fine with me.

6 THE COURT: There was one --

7 MR. KAROTKIN: And I was hoping you would take that  
8 one first because I know there are some people who have to  
9 catch airplanes.

10 THE COURT: There was one other -- there's one other  
11 party who filed the joinder, but it's --

12 MR. KAROTKIN: Yes. It's the same.

13 THE COURT: Mr. Laffredi here? I don't --

14 MR. ZIPES: Your Honor, he's not here. He had a  
15 personal issue. My name is Greg Zipes; you have not seen me  
16 before. I'm with the Office --

17 THE COURT: I just --

18 MR. ZIPES: -- of the United States Trustee.

19 THE COURT: -- didn't get your name.

20 MR. ZIPES: Zipes. Z-I-P-E-S.

21 THE COURT: Okay, Mr. Zipes, so you're taking over.  
22 So did you have a chance to review Mr. Karotkin's opposition?

23 MR. ZIPES: Yes, we did, Your Honor.

24 THE COURT: What's your take on that? What's your  
25 recommendation?

1 MR. ZIPES: Your Honor, the U.S. Trustee's Office --  
2 and we're dealing with the CEO motion at the moment --

3 THE COURT: Right.

4 MR. ZIPES: -- correct?

5 THE COURT: That's right.

6 MR. ZIPES: The U.S. Trustee's objections, as this  
7 Court is aware, fell into two buckets. One was a request for  
8 further information; that's something we often ask for in our  
9 objections. The motion as filed clearly lacked information on  
10 how the debtors reached their conclusions for compensating the  
11 CEO.

12 We asked for certain items that might have helped us  
13 understand, including underlying contracts, and we learned  
14 within the last couple days, perhaps, that there are actually  
15 no -- there is no written contract.

16 Your Honor, I was prepared to talk about both motions,  
17 so that's why you're hearing me say --

18 THE COURT: Okay.

19 MR. ZIPES: -- referring to more than one at a time.

20 I've heard this Court say that your bailiwick is the  
21 Bankruptcy Code and resolving --

22 THE COURT: Well --

23 MR. ZIPES: -- things here, and that's -- and I  
24 completely --

25 THE COURT: -- I think so.

1 MR. ZIPES: -- agree with that, Your Honor, and we're  
2 dealing with the Bankruptcy Code here.

3 So Your Honor, to answer your question, we believe  
4 that there is still a few issues in the CEO motion that does  
5 need to be resolved and I --

6 THE COURT: Well, okay. Let me just zero in on a  
7 couple questions. You observed in the response -- maybe it was  
8 one of your -- maybe Mr. Laffredi signed it, it doesn't  
9 matter -- you raised, but I don't think you want me to act on,  
10 the fact that it wasn't until your research that we learned  
11 that Mr. Johnson was actually paid a signing bonus, whether we  
12 want to call it that, he didn't really disclose it specifically  
13 in the motion. You don't want me to do anything about that?  
14 You don't want me to make him disgorge it?

15 MR. ZIPES: Your Honor, yes. I was getting to the  
16 points that we --

17 THE COURT: Okay.

18 MR. ZIPES: -- still had outstanding.

19 All right, Your Honor, we were very concerned about  
20 this disclosure, and there's a couple of questions here. This  
21 motion was filed under 363 of the Bankruptcy Code. And 363, a  
22 motion of this kind, is actually very unusual in a Chapter 11  
23 case. This is the retention of an executive, it's not a  
24 retention --

25 THE COURT: Right.

1 MR. ZIPES: -- of a professional party.

2 THE COURT: No, I understand.

3 MR. ZIPES: And Your Honor --

4 THE COURT: But it's not been the practice, in this  
5 district particularly, for compensation levels of people  
6 generally. But this is a big item and a significant position,  
7 important person.

8 MR. ZIPES: Absolutely.

9 THE COURT: So I can't fault the debtor for making  
10 their request, but --

11 MR. ZIPES: Absolutely, Your Honor.

12 THE COURT: Okay.

13 MR. ZIPES: And it is good that the information gets  
14 out there, as we've been trying to do. And that's one of the  
15 goals of the U.S. Trustee's Office.

16 Your Honor, the transition payment, we still have  
17 issues with that. First of all, it wasn't disclosed prior to  
18 it being paid; it was paid and then the motion was filed.

19 But in addition, Your Honor, we're dealing with a 363  
20 motion. And the question here is what standard applies, as  
21 well, under the Bankruptcy Code.

22 THE COURT: Well, but I want to be more specific.  
23 Because I asked you, on that item, are you asking that I order  
24 it be disgorged? I don't think your papers say that. I mean,  
25 I'll agree with you that I think it should have been disclosed

1 as part of the request. The question is, what do I do about it  
2 because --

3 MR. ZIPES: Because --

4 THE COURT: -- Mr. Johnson's -- now, he personally  
5 hasn't said anything, but the corporate counsel haven't denied  
6 that. They've said what they've said. And it's not something  
7 that was secret, it just wasn't in the motion. So therefore,  
8 what?

9 MR. ZIPES: And Your Honor, you're correct, the table  
10 has been set. So the question is what is this payment and  
11 should it be subject to a review? And that's a question that  
12 we still have. Usually these payments aren't made before these  
13 motions are filed, they're made after these motions are granted  
14 and the standard is met.

15 So Your Honor, if we look at what was paid here, is  
16 this a bonus? And if it is, under --

17 THE COURT: Well, who says it's a bonus? I mean, it's  
18 a -- I mean, I called it a signing bonus, but I mean, he took  
19 on this big job and he came with a lot of credentials. And I  
20 don't know what the bid and ask was, but somebody made a  
21 decision to give him three million dollars to take the  
22 assignment. So you can call it a bonus, or you can call it a  
23 retention payment.

24 Again, I'm going to go back to my question. Your  
25 papers don't say I should order him to disgorge it, so are you

1 asking me to do that or not? That's what I'm trying to pin you  
2 down on.

3 MR. ZIPES: Your Honor, and I don't -- I'm answering  
4 this sort of indirectly because I --

5 THE COURT: I know. That's why I'm asking you to  
6 answer it --

7 MR. ZIPES: Okay.

8 THE COURT: -- directly.

9 MR. ZIPES: So Your Honor, I think if we had -- and  
10 Your Honor, the answer is yes, pending satisfactory explanation  
11 as to what this payment was. So the question here is whether  
12 the response of the debtors, that they filed two days ago,  
13 adequately deals with this.

14 THE COURT: And what do you say --

15 MR. ZIPES: And so Your Honor --

16 THE COURT: -- to that?

17 MR. ZIPES: -- we had a chance to review the  
18 declaration --

19 THE COURT: Right.

20 MR. ZIPES: -- and again, I'm trying to focus on the  
21 statutory predicates here of what this should be moving under.  
22 And I still think the debtor has not answered a question here.  
23 If you look at the declaration that was filed two days ago,  
24 there's a list of other executives and transition --

25 THE COURT: Right.

1 MR. ZIPES: -- payments that were paid to them. They  
2 weren't just -- Your Honor, at least according to my reading of  
3 this declaration, they weren't just paid. There was shares,  
4 there was equity payments as part of those packages.

5 THE COURT: Well, but Mr. Johnson's compensation is a  
6 variety of things; we're just focusing on one component of it.

7 MR. ZIPES: Right.

8 THE COURT: Okay. Right? So okay. So I read the  
9 response. You believe that -- well, I mean, we know. We know  
10 from the motion and the response that his compensation is a  
11 variety of things, some performance based, some just being  
12 there, some only if he's terminated. And if it comes to your  
13 position on what if he's severed, what if he's terminated not  
14 for cause, that's a separate issue.

15 So look, let me try it a different way. Three million  
16 dollars is a lot of money. This case is high visibility, and  
17 what would happen if the debtor hadn't asked for it? Those are  
18 all hypotheticals. What if Mr. Johnson had been paid 30,000  
19 dollars for signing on, or what I'll call for signing; would  
20 you have the same issue? Are you concerned about the size of  
21 it, or the lack of disclosure of it?

22 MR. ZIPES: Your Honor, we were initially mostly  
23 concerned with the lack of disclosure and the explanation as to  
24 what bucket this fits under, if this is properly a 363 request,  
25 or if it should be something else.

1           And I think the severance aspect of this, there's a  
2   concession that 503(c)(2) would apply. In this one, our focus  
3   is what is this in actuality? Because under a KERP or a 503  
4   analysis, it's not necessarily what the debtor calls it, it's  
5   what the Bankruptcy Code --

6           THE COURT: Well, what do you call it? Again, let's  
7   go back to what do you call it. You've used the word "bonus"  
8   several times, the TCC uses the word "bonus" several times in  
9   its opposition to the KEIP motion; the TCC hasn't taken a  
10   position on Mr. Johnson's --

11          MR. ZIPES: Sure.

12          THE COURT: -- situation. So you're using the word  
13   bonus, but is it a bonus? I mean, to me, the -- Kevin Durant  
14   just signed with the New York Nets, and I presume he got a big  
15   check, which everybody might call a signing bonus. Mr. Johnson  
16   took on a job, and he has some duties to perform and he's  
17   getting paid a compensation, including the money he got paid up  
18   front. Now, what is the magic of saying that it's a bonus? Or  
19   Kevin Durant, calling it a bonus? It's what -- they paid him  
20   to come be on the team. And so when he gets his leg fixed,  
21   he'll be playing basketball. Mr. Johnson, presumably, is out  
22   there earning his pay right now.

23          The question is do I say sorry, slap his wrist, give  
24   me the three million back and then say, but your compensation  
25   is approved, therefore you can pay it now that it's been -- you



1 can have it back? So what do you want me to do?

2 MR. ZIPES: Okay. Yes, Your Honor, and I can sense  
3 your frustration with my answers here.

4 Your Honor, if this was done without seeking a court  
5 order, and this is the way that it normally would be done,  
6 parties with the consequences, whatever those consequences  
7 might be. Here, they're getting before the Court and they're  
8 saying, we want a court order blessing this payment. And so  
9 we're just saying they need sufficient information. Three  
10 million dollars; is three million dollars a reasonable sum  
11 under the circumstance?

12 We could say it's a big case, that it's necessary to  
13 pay someone adequately for this case, but here, they're asking  
14 this Court to bless a three-million-dollar payment.

15 THE COURT: Well, it's a package. They're asking me  
16 to bless a whole package. And --

17 MR. ZIPES: Sure.

18 THE COURT: -- again, we don't have motions like this  
19 for every senior employee that the company hires.

20 MR. ZIPES: Sure.

21 THE COURT: We do it when it is the top man on the  
22 totem pole in a highly visible position of a public company in  
23 bankruptcy with enormous problems. So I can't fault the  
24 debtors for asking. And I guess there is a be careful what you  
25 ask for principle here, because the statements even say that if

1 I were to disapprove it -- Mr. Johnson didn't say anything, but  
2 the corporate lawyers said he'll pay it back. So I'm assuming  
3 that's a true statement.

4 MR. ZIPES: All right. And we assume that's a true  
5 statement as well, Your Honor.

6 THE COURT: Okay. Well, let's switch to the 503(b)(2)  
7 question. And that's focused, your paper's focused, on the  
8 severance. So were you satisfied or not satisfied with the  
9 reply as to how Mr. Karotkin said the debtors will deal with it  
10 if there is a severance, not for cause, during the bankruptcy?

11 MR. ZIPES: And Your Honor, we appreciate the  
12 concession here, and we have no problem with that, with one  
13 caveat, Your Honor. And that is we haven't filed a plan in  
14 this case. We haven't gone through the plan process. And some  
15 of the requests -- some of the relief requested is possibly  
16 more appropriate for the plan stage.

17 THE COURT: But how do you tell someone that comes on  
18 board, we're going to bring you in, we're going to make you  
19 work on one of the most difficult cases in your imagination,  
20 and a portion of your compensation will be considered by a  
21 court somewhere down the line, after this very simple process  
22 called confirmation? That's not fair to him, is it?

23 MR. ZIPES: Or during confirmation. There may be, for  
24 example, a different compensation package, which is part of the  
25 overall deal --

1 THE COURT: But that --

2 MR. ZIPES: -- and plan.

3 THE COURT: -- goes both ways. Because if I approve  
4 this package and something makes Mr. Johnson's job all the more  
5 difficult and he accomplishes all the more extreme outcome and  
6 asks for more, I'm sure you'll be saying, wait a minute, you  
7 can't ask for more. We already fixed your compensation.

8 So look, I just want to zero in, and then I'll listen  
9 to Mr. Karotkin --

10 MR. ZIPES: Yeah.

11 THE COURT: -- and you can make --

12 MR. ZIPES: Yeah, no.

13 THE COURT: -- any comment, but just one more time.

14 MR. ZIPES: All right.

15 THE COURT: Focusing on the severance, as --

16 MR. ZIPES: Right.

17 THE COURT: -- I read your papers, the motion said, if  
18 Mr. Johnson is severed not for cause during the case or after,  
19 but at least during the case, he gets paid a severance pay of  
20 two-and-a-half million dollars, right? And that's cash  
21 dollars. And your position is, that is inconsistent with  
22 503(b)(2).

23 And the response was, as I read the response, well, if  
24 it's triggered during the bankruptcy, the debtors will comply  
25 with it. I mean, I'm asking you, is that an adequate

1 explanation from your point of view?

2 MR. ZIPES: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. ZIPES: Yes. So they would presumably -- and we  
5 would work out some -- they would have to get before this Court  
6 if there was some severance, and they would have to meet the  
7 standard under 503(c)(2).

8 THE COURT: Okay.

9 MR. ZIPES: Yeah.

10 THE COURT: Well, let me hear from Mr. Karotkin, and  
11 then I'll come back to you, Mr. Zipes.

12 Now, Mr. Karotkin, my first question for you is my  
13 last question for him: what does that mean, the debtors will  
14 comply with 503(c)(2)? Does Mr. Johnson know that?

15 MR. KAROTKIN: Yes. Of course he does.

16 THE COURT: Do I have a declaration from him? I mean,  
17 does that mean, Mr. Johnson, we promised you 2-1/2 million, but  
18 your severance is only 50,000?

19 MR. KAROTKIN: Yes. He absolutely knows that.

20 THE COURT: But I don't know that he knows that. I  
21 don't know the declaration. I have your statement that the  
22 debtors will comply with the Code, and I don't know what that  
23 means.

24 MR. KAROTKIN: It means exactly what it says it means.  
25 The debtors filed the motion to approve the contract, and the

1 understanding is that's exactly how it will work. And in  
2 fact --

3 THE COURT: I don't know exactly --

4 MR. KAROTKIN: -- there's a --

5 THE COURT: -- what the dollars are. Is it the same  
6 dollars?

7 MR. KAROTKIN: No, it would --

8 THE COURT: Well, I don't know.

9 MR. KAROTKIN: It would be based on the formula  
10 contained in the statute.

11 THE COURT: Well, it's not a fixed formula --

12 MR. KAROTKIN: No.

13 THE COURT: -- it's a relative formula.

14 MR. KAROTKIN: It would depend on when it happened.

15 THE COURT: Well, and I say -- but no, I'm saying if  
16 it happens before the effective date of the plan.

17 MR. KAROTKIN: Well, that's the only time it would  
18 apply --

19 THE COURT: Well --

20 MR. KAROTKIN: -- okay?

21 THE COURT: -- there are differences of opinion about  
22 that, but --

23 MR. KAROTKIN: Well, I think that Mr. Zipes was  
24 satisfied with our --

25 THE COURT: Well --

1 MR. KAROTKIN: -- explanation.

2 THE COURT: -- but I'm not.

3 MR. KAROTKIN: Okay.

4 THE COURT: That's why I'm asking the question. So  
5 here's my question: suppose, for its own reasons, the board  
6 decides to terminate Mr. Johnson two months from now; what does  
7 Mr. Johnson get?

8 MR. KAROTKIN: He gets whatever severance he would be  
9 entitled to under Section 503.

10 THE COURT: But he and you today don't know what that  
11 is.

12 MR. KAROTKIN: That's correct.

13 THE COURT: And it could be 50,000 dollars.

14 MR. KAROTKIN: It could be.

15 THE COURT: But how do I know that is what he's agreed  
16 to? Again, I don't suggest that you're making this up, but --

17 MR. KAROTKIN: That's what the --

18 THE COURT: -- it would seem to me, for the  
19 corporation to say, this is what the terminated, severed, not-  
20 for-cause executive is going to get, and I don't even know that  
21 he knows that, I don't know that I should be approving it. So  
22 you need to tell me why I should make that choice when I don't  
23 even know what it means.

24 MR. KAROTKIN: Well, Your Honor, you lost me on how  
25 you don't know what it means.

1 THE COURT: Okay. I can't calculate it --

2 MR. KAROTKIN: Well --

3 THE COURT: -- in terms of dollars.

4 MR. KAROTKIN: -- again, 503 provides for a  
5 calculation.

6 THE COURT: Yeah, but you have to take it in relation  
7 to a set of facts.

8 MR. KAROTKIN: At the time, if it happens.

9 THE COURT: Okay.

10 MR. KAROTKIN: Okay? And what I'm saying to you is  
11 that if Mr. Johnson is severed not for cause during the  
12 pendency of the case, despite what his contract says, he will  
13 get whatever that section provides in severance, and no more  
14 than that.

15 THE COURT: Okay. And so my statement again is, how  
16 do I know that he knows that? And I'm not playing games with  
17 you.

18 MR. KAROTKIN: I realize that.

19 THE COURT: I don't like a situation where we do a  
20 gotcha on somebody. Mr. Johnson's a very important person.

21 MR. KAROTKIN: Yes.

22 THE COURT: I never laid eyes on him unless he's here  
23 in the courtroom. I've never seen him.

24 MR. KAROTKIN: I will tell you --

25 THE COURT: No, don't. Let me finish.

1 MR. KAROTKIN: Sorry.

2 THE COURT: And when someone takes on this enormous  
3 responsibility and risks whatever he is risking professionally,  
4 although he hopes to be paid well, he also shouldn't be  
5 punished by saying, I didn't understand that. So if the board  
6 decides to terminate him tomorrow, and he says, well, where's  
7 my two-and-a-half million dollars, and you say, well, sorry,  
8 Bill, you'd better read 502.3(c), here's your 50,000, he's  
9 going to be an unhappy camper. Okay?

10 MR. KAROTKIN: Let me try to address that, okay? I  
11 can represent to you that Mr. Johnston is aware of it. I can  
12 also represent to you that having written this in the contract,  
13 if he wasn't aware of it, I probably wouldn't be showing up at  
14 the next hearing.

15 If you would like me to get a statement from him that  
16 he understands that's how it will work, I'm happy to do that.

17 THE COURT: Well, and this goes back to the other  
18 question, Mr. Karotkin. One of the things I would tell Mr.  
19 Johnston if I welcomed him to the court and congratulated him  
20 on taking on a horribly difficult task, is the one rule is  
21 don't play games with the judge by being half complete in your  
22 statement. And I find the statements, the corporate papers  
23 that you filed, and again, I don't mean to personalize this,  
24 the statement that doesn't disclose the three million dollars,  
25 and kind of indirectly to be very, very troublesome. I'm not



1 going to -- there are no consequences, but I will tell you in  
2 simple little cases when corporate officers start doing things  
3 like that without proper disclosure, they are promptly  
4 introduced to the trustee in a Chapter 11 case.

5 And I'm not going to do a thing here, but I'm  
6 wondering why do they have to be so -- sort of -- half-  
7 disclosed? Why couldn't it just have been disclosed?

8 MR. KAROTKIN: Right. I think that there is  
9 disclosure in the motion that he is being paid his  
10 compensation.

11 THE COURT: Yeah. His compensation. I know, but Mr.  
12 Karotkin, that's sort of -- that's sort of -- what's that  
13 phrase? Too clever by half. I mean, that doesn't say, and he  
14 got three million dollars.

15 MR. KAROTKIN: But Your Honor, again, his compensation  
16 and the three million dollars is fully in the chart. And there  
17 is an exact --

18 THE COURT: It's not disclosed in the motion.

19 MR. KAROTKIN: Pardon me?

20 THE COURT: It's not disclosed in the motion that  
21 says, this is what we'd like to do. Now, again, I promise you  
22 I won't --

23 MR. KAROTKIN: I believe the transition here is --

24 THE COURT: -- dwell on this, but a fair reading of  
25 that paper by me is that when I approve his motion -- your

1 motion -- he will get the payment. And that's fine. Again, I  
2 don't quarrel with the concept. But I found it troublesome to  
3 have my first involvement with him, personally -- not really  
4 personally, but -- to find it in the U.S. Trustee's response to  
5 say, they didn't tell you that he got his three million  
6 dollars.

7 MR. KAROTKIN: Sure.

8 THE COURT: So I'm not going to order it disgorged,  
9 unless there's some other reading to it. So your offer to me  
10 is that Mr. Johnston would acknowledge that if the board  
11 chooses to terminate him during the case, that he will get paid  
12 something that may be different from what the document says is  
13 his severance entitlement.

14 MR. KAROTKIN: Correct.

15 THE COURT: Okay. Well, I didn't know that until you  
16 clarified because it wasn't --

17 MR. KAROTKIN: Well --

18 THE COURT: I mean I didn't know it until you put it  
19 in the thing. There wasn't a whole lot of discussion about  
20 503(c) in your reply. The reply just said, we'll comply with  
21 it. And I didn't know what you meant by that. You've answered  
22 it now.

23 MR. KAROTKIN: Okay, well, I apologize if it wasn't  
24 clear. I felt that saying we will comply with the statutory  
25 provision would be clear enough for the Court to understand

1 that any severance would be subject to that formula.

2 THE COURT: Again, not to beat it to death. If Mr.  
3 Johnston is terminated for cause, and he gets something that's  
4 not the amount that's in the document, and he comes back with  
5 separate counsel and makes a motion and says, why the hell  
6 didn't I get what you said I was going to get, I will say,  
7 well, Mr. Karotkin said you knew about it.

8 MR. KAROTKIN: Yes. You can do that.

9 THE COURT: Okay. All right. I am going to leave it  
10 at that.

11 Mr. Zipes, do you want to say anything further?

12 MR. ZIPES: Your Honor, I --

13 THE COURT: Excuse me, excuse me.

14 Mr. Karotkin, I dominated our colloquy. If you wanted  
15 to say anything else in response to his argument, I didn't mean  
16 to cut you off. I mean I -- you answered my question.

17 MR. KAROTKIN: I don't have anything -- I don't have  
18 anything to say.

19 THE COURT: Okay. Go ahead, Mr. Zipes, anything  
20 further?

21 MR. ZIPES: Your Honor, the only point I make, and I  
22 appreciate all the Court's comments, is that this is a 363  
23 motion. It has possibly incentive-based bonuses in it and as  
24 long as it's clear that any bonuses, any intent of base bonuses  
25 will be brought to the Court's attention under 503 of the

1 Bankruptcy Code, I think we're --

2 THE COURT: Well, I mean I -- but you're not asking me  
3 to tell Mr. Karotkin if I approve the current motion, that he  
4 has to come back and ask for permission to execute that motion.  
5 He might have to come back with another motion, or choses to  
6 change it, particularly if more favorably. But you're not  
7 asking for something other than that, are you? I mean, if I  
8 approve it, I approve it. I'm not going to go back and say, I  
9 gotcha, I really wasn't approving it.

10 MR. ZIPES: Okay, Your Honor, we did ask for the  
11 further disclosure. We think 503 clearly has a role in this  
12 motion, but I hear your -- I hear the Court.

13 THE COURT: Okay. I'm going to -- I'm going to take  
14 the matter under advisement for now. Let's go to the KIEP  
15 motion.

16 And Mr. Karotkin, in the interest of time, I'm willing  
17 to the same thing I did on that issue; if you want to make an  
18 opening remark, you can, but I'd rather hear from the --

19 MR. KAROTKIN: Opponent.

20 THE COURT: -- opponent.

21 Let's go with the TCC. Mr. Julian, are you going to  
22 do that or is Ms. Dumas going to get that one, too?

23 MR. JULIAN: Ms. Dumas -- she's on the phone.

24 THE COURT: Ms. Dumas, are you still with us?

25 MS. DUMAS: Yes, sir, I am.

1 THE COURT: Okay. On the KIEP motion, I read your  
2 response and I appreciate what you had to say. Do you have  
3 anything further to add based upon what the debtor has filed?

4 MS. DUMAS: Very briefly, Your Honor, as the Court saw  
5 from the TCC's lack of a formal objection to the Johnson  
6 compensation motion, we are willing to give Mr. Johnson a shot.  
7 We believe that a top-down corporate culture change is  
8 essential. And we work consensually with debtors' counsel, Ms.  
9 Liou, to answer any questions or concerns we had with respect  
10 to Mr. Johnson's compensation package. And those questions  
11 were answered to our satisfaction.

12 Our view is that the question is materially different  
13 with respect to those individuals for whose compensation is  
14 governed by the KIEP motion. And because those are the  
15 individuals who, while not at the top, were senior executives  
16 during periods of time in which this corporate culture was  
17 continued. The problems that lie with PG&E's management and  
18 its assets, it's failure to focus on safety are so known, I  
19 can't even possibly repeat them, but they continue on into the  
20 bankruptcy case and they're not abated.

21 We learn of -- every day, we learn of continuing  
22 violations, falsifications, potential criminal actions. These  
23 are the people who brought us here, Your Honor. And whereas  
24 they're not the rank-and-file, as we pointed out, these are, in  
25 fact, the people who retained McKenzie to give them a cost-

1 benefit analysis of whether they should repair something if  
2 only 100 people would die as opposed to 100,000 would die.  
3 These are the people who have directed PG&E's scorched-earth  
4 litigation strategy against victims' counsel which continues to  
5 this day as the Court has seen from our difference of  
6 interpretation of the debtors' position on what it takes  
7 responsibility for in claims estimation.

8 We don't know any other way to let PG&E know that this  
9 can't continue, that these people should really not be  
10 receiving bonuses, they should be losing their jobs, and  
11 hopefully, Mr. Johnson will clean house. And we understand  
12 that there's a desire to keep the ship steady during the  
13 bankruptcy case, and we're sympathetic to it.

14 Our fallback position, rather than disapproval, is to  
15 require the debtor to change, during the course of the  
16 bankruptcy case, its metrics to a hundred percent safety  
17 focused. As Ms. Mitchell aptly said earlier during the status  
18 conference, we are all horribly, terribly concerned about  
19 consequences of a wildfire during the course of the bankruptcy  
20 case. That should be everyone's focus. And this does not  
21 appear to be a plan that recognizes, as we said in our brief,  
22 the realities on the ground as opposed to some hypothetical  
23 company that's been managed properly and is conducting itself  
24 properly in the bankruptcy case.

25 Thank you, Your Honor.

1 THE COURT: Ms. Dumas, your opposition includes some  
2 other comments that I want to understand better. And I have  
3 some questions for TURN, if their counsel's here, too.

4 One of the things that's stated in your papers is that  
5 the Court should perhaps at some point, if necessary, order any  
6 or some of the top-level management to disgorge any monies that  
7 are paid, if it turns out that some of these things happened in  
8 the future. I don't have any real ability procedurally or  
9 authority to do that, do I? In other words, if I --

10 MS. DUMAS: No, Your Honor, we -- it --

11 THE COURT: -- authorize this bonus and a corporate  
12 officer -- I'm not going to name anyone, you know there are  
13 twelve people named on the list. And you're not -- I mean, are  
14 you really suggesting that if there's another fire, or if Judge  
15 Alsup imposes further penalties, or the CPUC, and it says, all  
16 right, PG&E, you did it, you violated another one of the rules,  
17 that one of these individuals could be served with a summons  
18 and a complaint or a motion to disgorge some of this money that  
19 they might have been paid? I mean, how would I do that?

20 MS. DUMAS: I think Your Honor, you're absolutely  
21 correct. The argument was more rhetorical than practical.

22 THE COURT: Okay.

23 MS. DUMAS: We are at an absolute loss as to how to  
24 communicate better than we did in the STIP and in any way  
25 possible that this is not a typical company in operation.

1 THE COURT: Okay, I understand.

2 MS. DUMAS: It's seriously, seriously sideways.

3 THE COURT: No, I know you believe strongly and I'm  
4 not trying to deal with that.

5 You made another argument that suggests that somehow,  
6 I'm supposed to look at what the new standards are under AB1054  
7 for management compensation. I mean, again, I don't -- I mean  
8 Ms. Mitchell is the expert in the world on 1054, and I haven't  
9 even worked through all forty-five single-spaced pages -- lines  
10 of it. But if there's some provision in there that deals with  
11 management compensation, do you have any authority to say that  
12 the bankruptcy court can take a statute that applies for future  
13 events and use it to make a decision of a purely bankruptcy  
14 question of the compensation program? I mean, again, I'm not  
15 trying to put you on the spot, I just need to know what my  
16 choices are.

17 MS. DUMAS: No, sir. And I appreciate that. And Your  
18 Honor, you're not putting me on the spot. The point we made in  
19 our brief was that the State of California, the legislature,  
20 deemed it necessary to not only enact legislation governing the  
21 heightened need for properly managing these electrical assets  
22 but also, by way of comparison, to the debtors' board committee  
23 and executive compensation advisors saw fit to enact into  
24 legislation a comparison between executive compensation and  
25 safety.



1           So certainly, we understand that the Court can't  
2 enforce AB1054. It wasn't intended to be a guideline for the  
3 Court, merely an item of comparison that this is of statewide  
4 significance.

5           THE COURT: Okay. All right, thank you, Ms. Dumas.

6           Do we have -- is counsel for TURN here -- want to be  
7 heard? I don't see Mr. Harris.

8           MR. HARRIS: Yes, Your Honor, this is Robert Harris.  
9 Thank you.

10          THE COURT: All right. Okay. Yeah. Go ahead.

11          MR. HARRIS: Your Honor, I appreciate you reviewing  
12 our paperwork. You know, I have stated in our pleadings that,  
13 pursuant to the AMR case, to which I did not see a response in  
14 the reply brief. We do think it's too early to be approving  
15 incentive or, really, bonus compensation that will be  
16 unreviewable, even if it is, in fact, paid in equity. That  
17 equity component would saddle another potential plan component  
18 with a very difficult burden.

19          THE COURT: Do you -- I mean --

20          MR. HARRIS: And I think we're pretty sure at this  
21 point --

22          THE COURT: Mr. Harris, do you really think that is  
23 likely, given the size of the equity and the number, and the  
24 number of shares that are owned by the entire universe of  
25 equity holders, that the equity component of the compensation

1 of the KIEP would have any kind of a meaningful impact on  
2 anything except those particular individuals?

3 I mean, it's hard for me to imagine that. We're not  
4 dealing with hedge fund managers or Warren Buffett. We're  
5 dealing with individuals who believe they're doing their job  
6 and are asking -- their corporate employer is asking to have  
7 approval of a compensation package that obviously, yes, affects  
8 the individuals, but do I really -- do you really believe that  
9 it would drive the market? For example, would the trading  
10 price of the stock move because a corporate officer got X  
11 dollars with a publicly traded stock? It's hard for me to  
12 imagine that.

13 MR. HARRIS: No, Your Honor. I'll concede that in the  
14 context of the overall financial picture in this case, it is a  
15 relatively limitless amount. But I do believe that it would  
16 have to built into any future plan. I think that's how this  
17 will work, because I agree with you. I don't think you can  
18 undo this later. Once you approved it, you've approved it.

19 I just want to make two other points very quickly,  
20 Your Honor. First, with the respect to the failure to meet the  
21 evidentiary burden, Ms. Dumas, I think, said very nicely in her  
22 pleading, that even if the debtors fail to achieve the  
23 threshold PSI Metric, the key participants will still get fifty  
24 percent of their aggregate KIEP payout. That seems to be  
25 conclusive evidence that this is a layup, that this is a bonus

1 plan. They're going to get at least half, if that analysis is  
2 correct.

3 And further, the U.S. Trustee notes, this is again  
4 with regards to the evidentiary burden, that we are effectively  
5 50 percent of the way, as of today, through the period that  
6 would be covered by the KIEP plan, yet we do not seem to have  
7 heard from the debtor any kind of an indication as to whether,  
8 based on current performance, the KIEP will be met.

9 THE COURT: Well, I think the debtors' response was,  
10 in part, that this is confidential and it's also -- we're not  
11 even through the -- well, I guess we are through the second  
12 quarter now. But I thought that was there.

13 But listen, you made another point in your paper that  
14 the debtor needed to respond to the Wall Street Journal and  
15 Judge Alsup. Well, they've done that, and I presume you and  
16 your client have studied whatever the debtor filed with Judge  
17 Alsup.

18 Does that change your argument either way? I mean,  
19 for this motion.

20 MR. HARRIS: Your Honor, they have responded, and I  
21 don't have anything to add with respect to that. I don't think  
22 it's appropriate for me to comment on that. I won't stand on  
23 that as a further ground for objection.

24 THE COURT: Okay.

25 MR. HARRIS: If that answers the question.

1 THE COURT: Okay. All right. Well --

2 MR. HARRIS: That's all I have, Your Honor.

3 THE COURT: All right, we're getting late, but I want  
4 Mr. Karotkin to have an opportunity, of course, to respond.  
5 But is there anyone else in court or on the phone who took a  
6 position on this motion that wishes to be heard? And I don't  
7 need extra advice from people who didn't file.

8 All right. Mr. Karotkin, I'm going to let you say  
9 whatever you want to say, but I have one of my opening  
10 questions for you. And it's more of a rhetorical question this  
11 time. And this is something that got -- like the rest of us,  
12 the more I'm absorbed in this case, the more I'm overwhelmed by  
13 the magnitude of all the problems.

14 And so here's what I'm having trouble with, a phrase  
15 in your papers. And Mr. Karotkin, you've been in my courtroom  
16 many months now. I'm not personalizing this. So I'm not  
17 intending and I don't mean to imply that I'm criticizing you.  
18 Because I'm not; I hope you don't take it that way.

19 But there's a phrase, "Key officers need to be  
20 appropriately incentivized." You know, I have a problem with  
21 that. They ought to be appropriately incentivized by being key  
22 officers of the most complex utility bankruptcy in U.S. history  
23 dealing with one of the most pervasive tragedies in Northern  
24 California, if not world history. If that isn't enough  
25 appropriate incentivization to do the right thing, I don't know

1 what is.

2 So maybe it's just rhetoric, but looking at this thing  
3 from 35,000 feet, why should I -- why should I, at this point,  
4 when we've spent the last several hours with a discussion on  
5 how is this company going to get reorganized, why do I have to  
6 extra-incentivize highly paid professionals who should be  
7 incentivized enough just for the burdens that they're carrying.  
8 And if they're not incentivized enough, they ought to find  
9 another job, frankly.

10 MR. KAROTKIN: Well, Your Honor, obviously they are a  
11 group of very, very dedicated employees.

12 THE COURT: I assume that.

13 MR. KAROTKIN: And they have been working -- despite  
14 the comments that have been made, they have been working very  
15 hard to right, let's say, right the system and regain the trust  
16 of the State of California. I think what it really comes down  
17 to, Your Honor, is that these executives are entitled to  
18 receive a market-based compensation.

19 And that's all we're seeking here is the opportunity.  
20 The opportunity to receive a market-based compensation. But  
21 only, Your Honor, only if they achieve these targets. And  
22 that's the purpose of this, to give them the opportunity to be  
23 paid in accordance with the market. The fact that they are  
24 incented to do a good job, of course they're incented to do a  
25 good job. But they're also entitled to receive -- or at least

1 have the ability to receive a market rate of compensation.

2 And if you look at Mr. Friske's affidavit -- he's here  
3 today -- the declaration, in the absence of this KIEP  
4 opportunity they are substantially below market.

5 THE COURT: Why don't you --

6 MR. KAROTKIN: They're below the 25th percentile. And  
7 all we're asking, Your Honor, is to give them the ability --  
8 the ability -- if the company performs, to achieve what is a  
9 market-based compensation. Because they're working very hard.  
10 And they're trying to do the right thing.

11 THE COURT: I'll accept that. I won't question that.

12 MR. KAROTKIN: And the company had a business to run.  
13 And incentive compensation is a fundamental element of running  
14 an operations. It's typical. We're not asking for anything  
15 atypical. We have created the incentives which are sixty-five  
16 percent safety related. You've seen these metrics before. The  
17 new board of directors added the performance -- the --

18 THE COURT: No, I know the details of that.

19 MR. KAROTKIN: -- the modifier to make it even more  
20 safety related. And again, Your Honor, I'm not saying these  
21 people are not incentivized to do the right thing, they are.  
22 But I think it's important to give them the opportunity -- the  
23 opportunity. And it's not a guarantee. And you're familiar  
24 with how the program works, because it's very similar to the  
25 STIP, but --

1           THE COURT: Yeah, I am. The problem is when I look at  
2 the chart and I look at the numbers and I see what the bottom  
3 potential -- and I understand, you're going to tell me what I  
4 know, of course the board can terminate it anytime. But you  
5 know, you have to assume that sometimes the maximum becomes the  
6 minimum. And so there are -- and I don't want to pick out any  
7 one of the twelve. I have nothing to do with them. I don't --  
8 I like to assume if they aren't properly doing their job, the  
9 board or the disciplinary people will take care of that.

10           But it's still a large sum of money. And I mean half of  
11 the compensation is money. What if I said to you, it's got to  
12 be tilted more to the equity side? You know, people in Silicon  
13 Valley are used to getting equity and sometimes they end up  
14 filing bankruptcy and sometimes they each buy two more Teslas  
15 on them when the IPO happens.

16           Why not -- and this is a rhetorical question -- say, fine,  
17 we'll incentivize these folks by tipping the metrics, so they  
18 have a big equity play if the company comes through. But if it  
19 doesn't, I have a lot of trouble saying that several million  
20 dollars should be paid and we still haven't got a plan.

21           And I understand. There are all the reasons we talked  
22 about this morning why there isn't a plan. And I'm really  
23 asking you to give me your best argument as to why even that's  
24 a crazy idea. Because it's one of those things that's very  
25 tempting to me, to incentivize the heck out of all twelve of

1   them by letting them get some more equity play if the whole  
2   thing is successful. But not giving them seven-figure checks  
3   at the end of the year at a time when, based upon today, maybe  
4   there won't be one dollar to one fire victim yet, leaving aside  
5   the extra funds or the insurance recoveries.

6           MR. KAROTKIN: Uh-huh. All right. Let me address  
7   that. First of all, and I don't know if you noticed that we've  
8   had discussions with the Unsecured Creditors Committee and  
9   there were certain modifications --

10          THE COURT: Well, I know of some, yes.

11          MR. KAROTKIN: -- that were made.

12          THE COURT: Yeah, I --

13          MR. KAROTKIN: So with respect to half of the award  
14   which would be in equity, that is now deferred until the  
15   effective date of the Chapter 11 plan.

16          THE COURT: I know, but you know, what does that mean?

17          MR. KAROTKIN: But I think -- but that addresses your  
18   issue. Them being involved in Chapter 11 --

19          THE COURT: I mean come on, on Tuesday, I have to make  
20   a couple rulings; who knows what the equity's going to do when  
21   I make an announcement. I mean a confirmed plan, ideally, will  
22   have, as everybody has told me from Ms. Mitchell to you, that  
23   one of the goals is to get this company out the door so they  
24   can get stabilized in the equity market.

25          MR. KAROTKIN: No, no I understand, Your Honor. But I



1 thought you were concerned about them receiving an award prior  
2 to --

3 THE COURT: No.

4 MR. KAROTKIN: -- distributions being made under a  
5 plan and I was trying to address that.

6 THE COURT: No, but what I -- no. What I'm saying is  
7 that equity plays or equity compensation is standard procedure  
8 in Silicon Valley and there probably aren't a whole lot of  
9 start-ups that hand out fifty cents on the dollar to every  
10 employee benefit plan. They all get stock. And the ones that  
11 fail, they end up filing bankruptcy in court. And the ones  
12 that succeed, they buy Teslas.

13 So what I'm saying is why not here, why don't I just  
14 say that all these people are worthy of some incentivization,  
15 but not at the expense of real dollars that might otherwise  
16 help fund a plan.

17 MR. KAROTKIN: Well, again, I understand what you're  
18 saying.

19 THE COURT: You can't answer that.

20 MR. KAROTKIN: And I'll give you two responses to  
21 that. Number one, as you know, in most Chapter 11 cases, it's  
22 not customary to provide incentive in the form of stock because  
23 you don't know, at the end of the day, that it will have any  
24 value.

25 THE COURT: Right.

1 MR. KAROTKIN: And therefore, it doesn't really  
2 incentivize someone to perform --

3 THE COURT: Mr. Johnson's getting a bunch of them, if  
4 he's still -- and your twelve people half of their KIEP stock.

5 MR. KAROTKIN: Yes, that would be in the reorganized  
6 company as it was modified to address the Creditors Committee's  
7 concerns.

8 THE COURT: Right. No, I understand.

9 MR. KAROTKIN: And so if the idea is to provide them  
10 with a real opportunity to achieve a market rate of pay, yes,  
11 we believe we're solvent. Yes, we believe the stock has value.  
12 I think that Ms. Dumas probably has other views on that as to  
13 whether -- with the value of the claims they're asserting.

14 THE COURT: No, of course she does.

15 MR. KAROTKIN: I think that calls that into question  
16 and we're trying to propose something that, again, is  
17 meaningful to the employees. And I think we addressed part of  
18 that concern that the UCC raised by moving the half which is an  
19 equity compensation to, again, confirmation of a plan when  
20 distributions will have been made and this case will have been  
21 resolved.

22 So I think we have addressed part of your issue. I  
23 think that the concern is exactly what kind of incentives are  
24 you providing if there's uncertainty as to equity value.

25 And again, we believe the company's solvent --

1 THE COURT: No, I know you do, and that --

2 MR. KAROTKIN: -- but there are people who have other  
3 views on that. And --

4 THE COURT: And there are facts yet to be found.

5 MR. KAROTKIN: Exactly.

6 THE COURT: And I have -- of course, of course. We  
7 know that.

8 MR. KAROTKIN: And we're just trying to address that  
9 concern. I think that in the context of, again, as has been  
10 demonstrated in Mr. Friske's affidavit -- I don't want to  
11 dispute, Your Honor, that some of the numbers look big. I  
12 don't dispute that. Okay? But again, in the context of the  
13 market, and what is a market rate of pay --

14 THE COURT: No, I understand, I understand.

15 MR. KAROTKIN: And again, there's no guarantee here,  
16 they only would get these KIEP payments if the metrics are  
17 achieved.

18 THE COURT: I understand.

19 MR. KAROTKIN: And --

20 THE COURT: You taught me that on the first time  
21 around.

22 MR. KAROTKIN: And you've --

23 THE COURT: And I understand that.

24 MR. KAROTKIN: Okay.

25 THE COURT: Okay. I got it.

1 Anything further?

2 MR. KAROTKIN: No.

3 THE COURT: Okay. I'm going to take this matter,  
4 also, under advisement. In both this matter and the CEO  
5 compensation. I've gone through a lot in the last few hours,  
6 as everybody else has, and the lawyers working on the case. I  
7 will try to issue a decision either orally at one of the  
8 hearings coming up or in writing, but fairly soon. And that's  
9 the best I can do. So thank you all for a long morning and  
10 I'll see many of you on Tuesday.

11 MR. KAROTKIN: Thank you, sir.

12 MR. ZIPES: Thank you, Your Honor.

13 THE COURT: Have a nice weekend.

14 (Whereupon these proceedings were concluded at 1:56 PM)

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## C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO

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Date: August 12, 2019

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